

Fil-Qorti tal-Maġistrati (Malta)

Lil Maġistrat Inkwirenti tal-Ghassa Dr.

Rikors urġenti ta' Dr Jason Azzopardi (ID 143871M):

Jesponi bil-qima u bil-gurament tieghu jikkonferma:

Dan hu rikors li qed isir abbażi tal-artiklu 546(4A) tal-Kodiċi Kriminali

A. Elenku tal-fatti maghrufa mill-esponenti:

1) Illi fit-8 ta' Settembru 2023 deheret din l-ahbar f'TheShiftNews:-

<https://theshiftnews.com/2023/09/08/developer-pushes-ahead-with-project-for-mellieha-green-lung/>

“Developer pushes ahead with project for Mellieha green lung

Owners of adjacent land given 15 days to identify themselves or the development will proceed

Paul Attard, the secretary general of the Malta Developers Association (MDA), better known for his role in development company GAP, has moved onto the sec-

ond phase of his plan to build a massive block of apartments in a public green lung in Mellieha.

The parcel of land in Mellieha Heights has remained undeveloped through various administrations over the last 30 years. Attard acquired a chunk of it from the Lands Authority in [questionable circumstances](#). But with a tiny sliver of the land remaining out of his reach due to the unknown owners, he could not move on with his multi-million-euro project.

Through a public notice, Attard's architect, [Joseph Bondin](#) – also a shareholder in Joseph Portelli's illegal hotel in Mellieha – gave the unknown owners of the small portion of land, now adjacent to Attard's, 15 days to identify themselves.

NOTIFICATION TO UNKNOWN LAND OWNERS IN TERMS OF ART 4(2) OF L.N. 71/07 AS AMENDED BY L.N. 73/15
LOCATION: Vacant Site at Triq is-Saghtar c/w Wesghat in-Narcis c/w Triq il-Migbha, Mellieha
Description of Proposal: To Establish developable area, 30% public open space and alignments as per Northwest Local Plan Policy NWML 2

Owners of land parcels within the site indicated above intend to submit a Planning Control Application to the Planning Authority regarding the above site in line with the requirements of Art. 4 of L.N. 71/07. An attempt to trace all owners was made, however not all owners could be found. This notice is being made to inform owners who could not be traced about the proposed application. Such owners may contact the architect on the numbers indicated below by not later than (15 days from the date of this advert) for more details.

According to the notice published in the media, Attard advised his intention to “submit a planning application to the Planning Authority” and that his attempts to trace the owners of the remaining plot, which is not in his portfolio, have drawn a blank.

According to a legal notice, once the 15 days from this advert ends, Attard can ask the PA to proceed with his development application even on the part of the land that is not his.

Through a company, [T&S Properties Holdings Ltd](#) formed a few years ago together with Paul Vella, another developer from Mgarr known as Tal-Ballut, Attard 'won' a tender issued by the Lands Authority for the sale of the 4,000 square metres green lung in the area known as 'Il-Qortin' in Mellieha.

The tender was designed specifically for Attard's company, as a clause on the right of first refusal was inserted in the conditions, giving Attard the option to match any other competitive offer received by the Lands Authority.

Attard obtained this following the purchase of a small fraction of the large plot from another developer just a few years ago, The Shift has revealed.

The Planning Authority had shot down the previous owners' development application to turn his small portion of real estate into six apartments and a pent-house.

It is not yet known what position the Planning Authority is going to take and how planning laws are going to be interpreted once Attard and his partner submit their new application to turn the entire plot into tens of flats.

Victor Bonello, the previous owner, sold his fraction of the land to Attard after giving up on the chance of being given a permit to build on his land, an obstacle Attard somehow did not face.

Estimated by property dealers at a current market value of €12 million, the Lands Authority sold it to Attard's company for just €400,000 a year over 15 years.

Other conditions to facilitate his business deal include that after 15 years of paying in instalments while developing the plot, the new property owners – individual flat owners – can redeem the title in perpetuity.

This results in a massive bargain for Attard and his partner and an opportunity to make millions of euros from public land.

The Shift has revealed that during the ongoing process and before, Attard was renting out a small flat in Luqa to Lands Minister Silvio Schembri to use as his constituency office.

Schembri rebutted any connection and said he was paying rent on the flat and would be publishing receipts. This has not happened.

Jigifieri l-Lands Authority taht it-tregija u tmexxija tas-CEO taghha, Robert Vella, deliberatament tellfet **iktar minn €6,000,000 (de minimis), sitt miljun euro**, lill-erarju pubbliku biex deliberatament tivvantaggja lill-privat.¹

¹ Terga' u tghid, fl-artiklu tal-31.10.2024 f'TheShiftNews insibu li l-market value huwa ta' €20 miljun ta' din l-art. Mela jfisser li Robert Vella tallef apposta lill-kaxxa ta' Malta ftit iktar minn €14-il miljun f'dan it-trasferiment biss.

Tant kemm Robert Vella ried li t-tender jirbhu min rebhu li: *“The tender was designed specifically for Attard’s company, as a clause on the right of first refusal was inserted in the conditions, giving Attard the option to match any other competitive offer received by the Lands Authority.”*

Minn dan l-artiklu wkoll jidher car li fuq bazi *prima facie* hemm lok ta’ Inkjesta Magisterjali anke sabiex jigi ippreservat kull tracca u suggett materjali ta’ delitti li setghu gew imwettqa minn Robert Vella biex jagevola lill-privat u ‘l Ministru Silvio Schembri.

Ghax hu fatt inkontestat li *“during the ongoing process and before, Attard was renting out a small flat in Luqa to Lands Minister Silvio Schembri to use as his constituency office.”* Kulmin hu midhla ta’ Hal Luqa jaf b’dan.

2) Illi fl-20 ta’ Novembru 2024 il-Planning Authority **harget** il-permess ghal dan l-izvilupp, meta l-istess Planning Authority *“The Planning Authority had shot down the previous owners’ development application to turn his small portion of real estate into six apartments and a penthouse”* (vide rapport hawn fuq)

<https://timesofmalta.com/article/109unit-apartment-block-mellieha-heights-gets-pa-approval.1101267>

“Controversial 109-unit apartment block at Mellieha heights gets PA approval

PA board unanimously deems project 'in line with planning parameters'

Jekk imbaghad wiehed jiehu l-kalkolu ta’ €50 miljun li huwa imsemmi fl-artiklu tal-31.10.24 f’TheShiftNews bhala l-valur finali tal-progett, allura t-telf ghall-erarju pubbliku (31.10.2024 f’The ShiftNews: *“Attard, together with his associate, Paul Vella, known as ‘Tal-Ballut’, now wants to build 109 new apartments spread over five storeys, which, when completed, will fetch a market price of some €50 million.”*) joqrob €44 MILJUN.



*The abandoned plot is set to be turned into a 109-unit apartment complex.
Updated 5.40pm*

A controversial 4,000 square metre, 109-unit apartment block in Mellieħa green lung was given the go-ahead by the Planning Authority on Wednesday.

In a sitting held on Wednesday morning, the three-person PA board dismissed concerns raised by residents and the Mellieħa local council about the project's massing and impact on the community's quality of life, finding that the project was "in line with planning parameters".

The board unanimously approved the application, with chairperson Stephania Baldacchino and members Mireille Fsadni and Anthony Camilleri all voting in favour.

Mellieħa mayor Gabriel Micallef later slammed ministers hailing from the locality's electoral district for their silence over the proposal.

The PA's decision on Wednesday brings the bitter dispute between residents and authorities over the plans for the plot to an end.

Last month, residents and NGO group Il-Kollettiv took to the streets to [demand](#) plans be scrapped, describing it as a "concrete trophy" and saying that the project would rob them of a rare urban green space.

Both Mellieħa mayor Gabriel Micallef and deputy mayor Matthew Borg Cuschieri backed the residents' protest.

But developers T&S Property Holdings pushed on with [plans](#) to build 23 residential units on each of its ground, first, second and third floors, for a total of 92 apartments, together with 17 penthouses and 171 basement garages.



One of the blocks that will be built on the plot. Image: Planning Authority

The company insisted that the area had been designated for development since 1965, with the 2006 local plans also marking the area as available for development.

T&S Holdings are a familiar face in the construction industry, headed by Paul Attard, director of GAP Property and Paul Vella, who leads Ballut Blocks.

A controversial project from the start

The project first caught public attention in 2023, when the government sold the plot of land, with an estimated market value of over €12m, to the developers on a 50-year perpetual revisable emphyteusis against an annual payment of €380,000.

The deal stipulated that the winning bidder could redeem the emphyteusis within the first 15 years after a revision according to the rate of inflation

Despite being outbid in the tender process, T&S emerged with the land's title thanks to a right of first refusal they held because they owned an adjacent piece of land. This allowed them to match the highest bid and take over the entire plot.

Shortly afterwards, residents [filed](#) a parliamentary petition urging the Lands Authority to reverse its decision to give the land away, with PN MPs Robert Cutajar and Ivan Castillo, as well as then-PL MEP Cyrus Engerer backing residents' calls."

3) Illi fil-31 ta' Ottubru 2024 deheret din l-ahbar f'TheShiftNews:-

<https://theshiftnews.com/2024/10/31/lands-authority-blocks-valuation-report-of-mellieha-land-sold-to-mega-developer/>

Lands Authority blocks valuation report of Mellieha land sold to mega developer

The Lands Authority is refusing to disclose crucial information on the sale of the last remaining green lung in Mellieha to mega-developer and Secretary General of the Malta Developers Association (MDA) Paul Attard.

Through a very dubious deal coordinated by Lands Authority [CEO Robert Vella](#), a 4,000-square-metre vacant government plot in the area known as Tal-Qortin was sold to Paul Attard, the MDA's secretary general.

Attard, together with his associate, Paul Vella, known as 'Tal-Ballut', now wants to build 109 new apartments spread over five storeys, which, when completed, will fetch a market price of some €50 million.

Through a 15-year temporary emphyteusis that can become perpetual (forever), the deal was made for the paltry sum of €380,000 a year or a total of €5.4 million plus bank interest rates. Property experts value the same plot at a nearly €20 million market price.

As part of an ongoing investigation on the scandalous Lands Authority deal, The Shift asked the Lands Authority to make public the original valuation report conducted by the government agency, establishing the value of the land.

It also asked the Authority for a copy of all correspondence between CEO Robert Vella and developer Paul Attard and a copy of the minutes of the Lands Authority board meeting in which the tender issue was approved.

Sources told The Shift that while some of the board members, including Chairman John Vassallo, insisted that the Authority come clean on this deal, now that the

*National Audit Office (NAO) is also investigating it, **the CEO is refusing to make the documents public.***



The CEO of the Lands Authority, Robert Vella.

Although the large plot can be developed, the government never sold it to protect the hundreds of families living in the area from further urbanisation.

Leading up to the deal

The Shift reported how an unusual clause in the tender, Attard was given an advantage to secure the public land.

Attard owned a slice of the land within the area, which he bought off a Mellieha owner who could never get Planning Authority permission to develop it.

When the tender was issued, Attard, as the owner of a small piece of the land in the area bought a few years earlier, was given the right of first refusal. The Shift revealed that the small wedge happened to belong to T&S Properties Ltd, which has Paul Attard as its majority shareholder.

While Attard, as expected, acquired the whole plot through the tender's right of first refusal clause, he presented a Planning Control application to rezone the whole area and get the green light to build up to five floors above ground level.

Soon after his rezoning application was accepted, despite objections, Attard presented a new application earlier this year, PA00371/24, asking to build 109 apartments on five floors and two underground car parks containing 171 garages.

Recently, residents of the already crowded area have publicly protested in front of the plot, calling on Prime Minister Robert Abela to stop this "atrocious".

Hundreds have already made an official objection to the Planning Authority, and the NAO was called to investigate the tender issued by the Lands Authority and the sale to Paul Attard.

They also asked for a probe into possible connections between Attard, former Lands Minister Silvio Schembri, and Prime Minister Robert Abela.

So far, the Planning Authority is still considering Attard's application”

Fuq bazi *prima facie*, mini dan l-artiklu u fatti fid-dominju pubbliku jidher car li b'Inkjesta Magisterjali jista' jkun ippreservat is-suggett materjali tar-reati li jaf fuq bazi *prima facie* jinkludu kolluzjoni, u allura komplicita kriminali, bejn il-privat, il-Ministru Silvio Schembri u l-Prim Ministru innifsu u ufficjali pubblici ohra.

Dan kollu jaf il-genesi tieghu ghal dan id-deal mifni b'illegalita kriminali, inkluz probabilmement korruzzjoni, li Robert Vella bhala CEO tal-Lands Authority approva u awtorizza.

Hija Inkjesta Magisterjali biss li tista' u ghandha tiddetermina liema delitti kriminali gew kommessi u minn min, wara li s-suggett materjali tad-delitti (li ghadu jezisiti) jkun ippreservat u elevat.

4) Illi fit-3 ta' Marzu 2024 deheret din l-ahbar f'TheShiftNews:-

<https://theshiftnews.com/2024/03/03/lands-authority-tender-to-legalise-public-land-takeover-after-false-declarations/>

“Lands Authority tender to legalise public land takeover after false declarations

The Lands Authority allowed a block of flats to be built on public land, ignoring the false declaration of ownership by the developers and then issued a tender for its sale to the same developers in a bid to cover up the irregularities.

An investigation by The Shift shows how the Lands Authority and the Planning Authority failed to address two illegal declarations of ownership from the Gozitan developers and instead gave the green light to a series of procedural manoeuvres to regularise the development.

The scandal concerns a new block of garages, flats, and penthouses named ‘By the Bastion Court’ in Victoria, Gozo.

How did the land grab happen?

In 2010, Gozitan brothers Ronnie and William Gatt – better known as ‘Ta’ Gianmaria’ who own various construction businesses in Gozo, including Gatt Tarmac Ltd, applied to build a block of apartments on a disused plot in Triq ta Wara s-Sur, in Gozo’s capital, Rabat.

In their official declaration filed to the Planning Authority filed through their architect [Saviour Micallef](#), the two brothers declared that they were the sole owners of the 500 square metre plot. They also declared the government did not own any part of the area.

Applicant's declaration in terms of article 71 (4) of Act VII of 2016

Tick ONE box only

I apply for development permission and declare that, to the best of my knowledge, all the details and information contained in this application and on the submitted drawings/documents accompanying this application are correct and complete.

In addition I, the applicant certify that:

I am the sole owner of the entire site indicated on the site plan.	True
I am not the sole owner of the entire site (or part thereof) indicated on the site plan. However, I have notified (by registered letter or through affixing a notice on site for 5 working days and through publication in a newspaper, a copy of which is attached) the owner/s of my intention to apply and the owner/s has/have granted consent to such a proposal.	False
I am not the sole owner of the entire site (or part thereof) indicated on the site plan. However, I hold the site under an agricultural lease title or under a title of lease and I have notified (by registered letter, a copy of which is attached) the owner/s of my intention to apply to carry out works under a scheme of a Government entity.	False
In my capacity as the authorised public officer, the applicant is the Government of Malta, or any department, agency, authority or other body corporate wholly owned by the Government, and I have notified (by registered letter or through affixing a notice on site for 5 working days and through publication in a newspaper, a copy of which is attached) the owner/s of my intention to apply.	False
The site is partly or wholly owned by Government.	No

Signature

The developers made two false declarations in their development application.

In fact, half of the plot, some 250 square metres, is public land. The Lands Authority, currently under the responsibility of Minister Stefan Zrinzo Azzopardi and CEO Robert Vella, failed to highlight this fact or object to the application.

In 2012, the Planning Authority approved the development of a block of apartments consisting of 23 underground car parking spaces, six large flats and two penthouses spread over seven storeys, three of which are underground.

*The construction was delayed, and in 2017 the Planning Authority renewed the permit, with the Gatts again **falsely declaring** they owned the entire plot.*

Internal Lands Authority documents, seen by The Shift, show that at least since 2022, when the development was completed and most of the flats sold by the Gatt brothers, the Lands Authority was fully aware that most of the flats had been built illegally on public land.

Despite this, in November 2022, CEO Robert Vella presented a proposal to the Lands Authority board to sell the land without informing board members that the plot had already been turned into flats by a private developer.

Also, instead of selling the plot at the current market rate, the 250 square metres of public land was offered via a tender filed in January 2024 based “on a perpetual revisable emphyteusis”, redeemable within the first 15 years.

SCHEDULE OF TENDERS FOR THE : Grant on a perpetual revisable emphyteusis of two (2) sites *tale quale* forming part of Premises at Triq Ta' Wara s-Sur, Rabat, Ghawdex as shown edged in red marked with letters 'A' and 'B' and in full detail on the plan P.D. 2022_0379, pursuant to Advertisement No.4 published on the 26th January ,2024. Copy whereof is hereto annexed. The winning bidder has the chance to redeem this emphyteusis within the first fifteen (15) years after a revision according to the rate of inflation as explained in detail in the emphyteutical conditions. Tenders are to be accompanied by a Bid-Bond for an amount of €50,000 as stipulated in the tender conditions. Offers below the amount of sixteen thousand and nine hundred and fifty-eight Euros (€16,958) *per annum* will not be considered. This tender may be subject to the right known as the right of first refusal as per article No. 32 of Chapter No. 573 of the Laws of Malta.

Tender Number	Name of Tenderer	Amount Tendered	Remarks
1.	RONNIE + PEGGY ANN GATT.	16,995	3.34 LETTER DCS
			ATTACHED

Ronnie Gatt and his wife were the only bidders on the illegally built land

This served to lower the price at which the land was to be purchased – the developers would have to pay a lesser amount to take ownership of the parcel of public property. It also gave them time to sell the flats and make a profit on the plot, built illegally.

Since they owned the land adjacent to the plot they built illegally, they were given the right of first refusal on the tender.

As expected, the only bidders for this 'tender' were Ronnie and his wife, Peggy Ann Gatt, one-half of the duo who built the flats illegally.



Ronnie and Peggy Gatt

No explanation from Lands Authority

The Shift contacted Lands Authority Chairman John Vassallo and its CEO Robert Vella to ask for their comments, specifically why no legal action was taken against the Gatt brothers for squatting on public land. Instead, the Lands Authority fixed the problem by giving them the land.

The Shift also asked CEO Robert Vella whether he personally knows the Gatt brothers. He did not answer.

It is as yet unclear whether the Lands Authority auditor, Charmaine Muscat, who is obliged to scrutinise tenders before they are issued, had cleared the deal”

Minn dan l-artiklu, qatt michud, jidher iktar minn fuq bazi *prima facie* li sehhekk dikjarazzjonijiet foloz lill-awtorita pubblika (delitt ta' falz ideologiku) bil-barka ta' Segretarju Parlamentari u CEO Robert Vella.

Minflok ic-CEO Robert Vella irraporta l-kaz lill-Pulizija biex jinvestigaw, minflok ma' l-Kummissarju tal-Pulizija fetah investigazzjoni kriminali u/jew talab Inkjesta Magisterjali hu stess, ma sar xejn u ghamlu bhat-tliet xadini li ma raw xejn, ma semghu xejn u ma qalu xejn.

Huwa ghalhekk li l-esponent qed ikollu jdur fuq il-Magistrat Inkwirenti biex jitlob li tibda 'in genere' mill-iktar fis qabel ma jkun tard wisq ghax hemm min ghandu interess li jeqred is-suggett materjali tad-delitti imwettqa.

5) Illi fil-11 ta' Marzu 2024 deheret din l-ahbar f'TheShiftNews:-

<https://theshiftnews.com/2024/03/11/no-investigation-of-lands-authority-over-block-of-flats-built-on-public-land/>

“No investigation of Lands Authority over block of flats built on public land

The government has so far failed to order an investigation on a serious case of possible abuse of public land and corruption at the Lands Authority, revealed by The Shift last week.

An investigation showed that a tender issued for the sale of public land last January had already been compromised before its publication. The land in question had already been illegally occupied for years by two businessmen who had turned it into a block of flats in Gozo.

*The Lands Authority knew this because a valuation was carried out before the tender's publication. Yet the Authority chose to legalise the abuse and sell the land to the illegal occupiers instead of taking legal action. **Through its actions, the Authority, entrusted to protect the public interest, abetted the two businessmen to make hundreds of thousands in profit from illegally occupied public land.***

Minister Stefan Zrinzo Azzopardi remained tight-lipped when asked what action he would be taking to address this blunder; a deal approved by the Board of Governors of the Lands Authority.

The minister also refused to explain whether he had ordered an internal investigation. The PN's spokesman for Lands, Stanley Zammit, has also not commented on the scandal.



Robert Vella, CEO of the Lands Authority.[/caption]

Sources have told The Shift that before the tender was issued last January, Lands Authority's Chief Audit Officer Charmaine Muscat had reviewed the case file and consented.

According to an internal valuation report drawn up in November 2022 and seen by The Shift, the Internal Audit and Investigations Office declared that "there were no irregularities in the file related to this case".

The tender concerns a 250-square-metre site in Triq ta' Wara s-Sur, Victoria, Gozo.

*This public land was occupied **illegally** by Ronnie and William Gatt, the owners of Gatt Tarmac Ltd, known as Ta' Gianmaria, and turned into a block of apartments and penthouses.*

*The brothers made a **false declaration** to the Planning Authority twice, **declaring that they owned the land when it was, in fact, public land.***



Ronnie and Peggy Gatt. [/caption]

*Instead of acting to protect the public interest, Gozitan CEO **Robert Vella** issued a tender for the sale of the land on a temporary emphyteusis, which meant that the eventual owners would get a better deal.*

Upon the tender's closure, the only bid submitted was from Peggy and her husband, Ronnie Gatt, one of the two Gatt Tarmac brothers who occupied the site”.

6) Illi fit-8 ta' Settembru 2024 deheret din l-ahbar f'TheShiftNews:

<https://theshiftnews.com/2024/09/08/lands-authority-helps-sladden-obtain-seaside-property-to-develop-restaurant/>

“Lands Authority helps Sladden obtain seaside property to develop restaurant

Pierre Sladden is among those facing criminal charges on the corrupt hospitals deal

***A set of manoeuvres by the Lands Authority**² has landed Pierre Sladden a seaside property which he planned to develop into a restaurant*

Sladden is currently facing criminal charges related to the hospitals deal following the conclusions of a magisterial inquiry detailing his involvement as a freemason.

Situated right next to the shore in Dawret ix-Xatt, the property acquired by Sladden is public property operated by his grandfather for years and is in a derelict state, but Sladden wants to develop it into a seaside restaurant.

But he had a problem. His cousin was in the way.

The Lands Authority evicted Sladden's cousin and took the premises back into possession a few years ago.

Shortly after, in 2021, the property was reissued for lease through a new tender.

The winning bidder is Eurybates Ltd – a company owned by Ivan Vassallo, the same owner of the beleaguered Technoline company and business partner of contractor Pierre Sladden.

*Vassallo, through Eurybates Ltd offered the highest bid at €30,500 a year, just €500 more than the next bid, **raising suspicions of internal intervention in the tendering process.***

² Textbook case ta' truffa skond l-artiklu 308 tal-Kap.9, fil-fehma umli tal-esponenti.

SCHEDULE OF TENDERS FOR THE : Lease *tale quale* for commercial purposes of the premises which consist of a Site and Structures at Dawret ix-Xatt, Xghajra as shown edged in red on the plan P.D.46_84_A, pursuant to Advertisement No.1 published on the 8th January, 2021. Copy whereof is hereto annexed. The winning bidder is obliged to provide public toilet facilities. Tenders are to be accompanied by a Bid-Bond for the amount of €40,500 as stipulated in the tender conditions. Offers below the amount of thirteen thousand and five hundred Euros (€13,500) per annum will not be considered.

Tender Number	Name of Tenderer	Amount Tendered	Remarks
1.	EURYBATES Ltd	€30,500	BID BOND ATTACHED
2.	GEORGE+ OKANE BUTTIGIEG	€30,000	BID BOND ATTACHED
3.	KEITH SAID	€22,550	BID BOND ATTACHED.
4.	DRIEGH Ltd	€21,456	BID BOND ATTACHED.

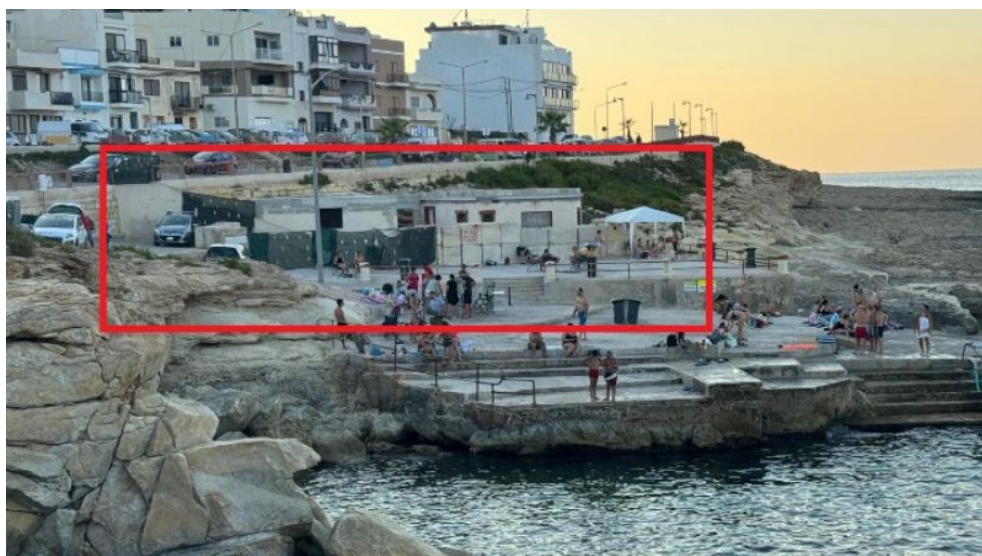
The winning bid was just €500 more than the second-lowest. [/caption]

A family feud resolved by the Lands Authority

Sladden, the owner of construction company Red Map, had been trying to take the bar away from his cousin for many years, according to sources close to the extended family.

His cousin never wanted to hand it over; not even through payment or a management agreement commonly used, although irregularly, to swap possession of government property.

Developments seem to point to Sladden using his contacts to force his cousin out.



The Xghajra premises on the water's edge to be turned into a restaurant. [/caption]

The concession's winner, Ivan Vassallo, is not in the catering business. His company, at the centre of the hospitals deal controversy, sells medical equipment.

Lands CEO Robert Vella did not reply to questions for an explanation.

Documentation from the planning process confirms Sladden used contacts and loopholes to acquire the property.

Development Planning Permit No.	PA/01809/22
Role on-site	Full Name
Developer.	Ivan Vassallo
Perit in charge of the project.	Marc Vincent Spiteri
Perit responsible for demolition method statement.	NA
Perit responsible for excavation method statement.	NA
Perit responsible for construction method statement for building works.	Marc Vincent Spiteri
Site Technical Officer during demolition.	NA
Site Technical Officer during excavation.	NA
Site Technical Officer during building works.	NA
Contractor responsible for demolition.	NA
Contractor responsible for excavation.	NA
Contractor responsible for building works.	Pierre Sladden
Project Supervisor as per Legal Notice 88 of 2018 appointed by developer.	Carmel Tonna
Site Manager appointed as per Legal Notice 295 of 2007.	Andrea Sladden
Licensed Mason.	Andrea Sladden

Compliance notice revealing the hidden hands.[/caption]

The Planning Authority initially objected to application PA01809/22 to convert the area into a large restaurant next to the sea, recommending a refusal as it went against the local plan.

Yet, all was settled shortly after, as a few amendments to the submitted plans were made, and the application was approved.

A commencement notice officially declared that Pierre Sladden's Red Map would carry out the planned works while his son Andrea would be the site manager.

Sladden's machinery moved in earlier this year to upgrade the premises, but everything came to a halt when, together with Ivan Vassallo and others, he was summoned to court on criminal charges.

Since both Sladden and Vassallo were slapped with a freezing order, work on the new restaurant in Xghajra has come to a complete standstill.

The Shift tried to contact Sladden for comment but he did not answer his phone.

7) Illi fit-3 ta' Novembru 2024 dehert din l-ahbar f'TheShiftNews:

<https://theshiftnews.com/2024/11/03/villa-rosa-exclusive-government-sold-e3-million-alley-to-tal-franciz-for-e134000/>

“On the eve of the last general elections, Anton Camilleri, known as Tal-Franciz, bought a public alley in St George’s Bay, valued by the Lands Authority at €3 million for just €134,000, The Shift can reveal.

A valuation report drawn up by three veteran architects, now the focus of an investigation by the National Audit Office (NAO) related to the Villa Rosa project, shows that the market price of the 620-square-metre alley in 2022 stood at €2,986,600.

The independent valuation, seen by The Shift, considered the area’s value and the alley’s potential if it were to be developed, as proposed in the controversial Villa Rosa development.

To the disbelief of senior Lands Authority officials, on the eve of the elections in March 2022, a tender was issued to sell this alley for just €134,000.



The alley (in red) was sold to Anton Camilleri for a fraction of its value.

The tender closed just two days before the elections. Anton Camilleri was awarded the tender at a fraction of its market value. Incidentally, he was the only bidder in the tender process.

The Lands Authority is controlled by CEO Robert Vella.

Tender made to measure

Investigations by The Shift show that the Lands Authority, the owner of the 106-metre-long alley that splits the Villa Rosa grounds in two, held various meetings with Anton Camilleri before the tender was issued. In most cases, CEO Robert Vella led the discussions.

These discussions led to an eventual call for tenders, specifically written to match Camilleri's requirements.

In fact, instead of issuing the alley for an outright sale, as is standard practice, it was specified that "the passage cannot be obstructed with any structures up to the height of 5.5 metres from the ground."

*This meant that Tal-Frañiż could use the alley, giving him the right of passage to his massive project from the shoreline of St George's Bay. He could even **build above** the public tunnel.*

Advt No. 35. Sale tale quale of an alley at Ix-Xatt ta' San Ġorġ, San Ġiljan, as shown edged in red on the plan P.D.2019_0359. This site is subject to existing servitudes in favour of the adjacent third party properties which must be safeguarded. Unlimited access from the existing configuration of this passage to the public either by car or by walk shall be guaranteed at all times. This passage cannot be obstructed with any structures up to the height of five decimal point five metres (5.5m) from the ground. Tenders are to be accompanied by a bid-bond for the amount of €13 385 as stipulated in the tender conditions. Offers below the amount of one hundred and thirty-three thousand and eight hundred and forty-six euro (€133,846) will not be considered. This tender may be subject to the right known as the right of first refusal as per article No. 32 of Chapter No. 573 of the Laws of Malta. A fee of €50 will be charged for the tender documents.

The tender and its specifications now under NAO investigation.

Why was the alley crucial?

The acquisition of the 5.5-metre-wide alley was crucial for Anton Camilleri's project.

While the alley may seem insignificant compared to his project over 50,000 square metres of land, the alley splits his project as it runs through his proposed development. Without it, Camilleri could not link the two separate sides of his mega project.

Its acquisition completed his plans, which he later presented to the Planning Authority. The alley is now earmarked as an essential access point to his project.

The alley's acquisition on the cheap is one of various ongoing manoeuvres by the government intended to benefit Anton Camilleri and his project.

*The Shift already **revealed** how the prime minister, through a cabinet decision, instructed the Planning Authority to change the local plan to accommodate the Villa Rosa project so Camilleri could build his towers.*



Anton Camilleri's Garnet Investments Ltd is behind the Villa Rosa project in St George's Bay.

According to the current local plan, Camilleri would not be able to get a permit for his towers, which would be up to 34 storeys and completely engulf St George's Bay.

NGOs opposing this development accused the Planning Authority of copying the requirements laid down by Garnet Investments Ltd, the company owned by Tal-Franciż, in the so-called 'consultation' process.

The Auditor General has started its investigation following a request by NGOs.

The Opposition has opposed the change in local plans for Villa Rosa and insisted that any amendments must be holistic and not intended to benefit a particular project. But it stopped short of taking a stand on Camilleri's project.

Camilleri is known to be a donor to both political parties represented in parliament and politicians from both sides of the House."

Din l-informazzjoni, skandaluza, tal-wahx u disgustanti li tindika car xibka ta' kolluzjoni kriminali bejn Robert Vella u terzi persuni, possibilment ukoll il-Prim Ministru jew Ministri fil-Gvern tal-pajjiz in vista ta' dak rivelat f'dan l-artiklu u l-kronologija ta' kif sehhevw zviluppi in konnessjoni ma' dan it-trasferiment ta' art u progett, qatt ma giet michuda b'mod kategoriku, sa fejn hu infurmat l-esponenti.

U qatt ma waslet biex il-Kummissarju tal-Pulizija jinizjala la talba ghall-Inkjesta Magisterjali u lanqas biss infethet investigazzjoni kriminali, sa fejn huwa infurmat l-esponenti.

Huwa ghalhekk li l-esponent qed ikollu jdur fuq l-unika tarka ta' kenn li ghandu bhala cittadin, u cjoe il-Magistrat tal-Ghassa, u jitlob skond il-Ligi li tibda Inkjesta Magisterjali li hija biss ghandha s-setgha u l-mezzi biex tippreserva s-suggett materjali tad-delitti imwettqa, speċjalment billi jkunu elevati minuti, devices elettronici u servers.

8) Illi fl-10 ta' Novembru 2024 deheret din l-ahbar f'**TheShiftNews**:-

<https://theshiftnews.com/2024/11/10/lands-authority-governors-overruled-on-objections-to-villa-rosa-tender/>

“Lands Authority governors overruled on objections to Villa Rosa tender

At least two members of the Lands Authority’s Board of Governors objected to the issue of a tender for the sale of an alley in St George’s Bay for just €134,000 when an internal valuation put it at a market value of €3 million, but they were overruled.

The Shift recently revealed that the alley was sold to Anton Camilleri, known as Tal-Franċiż, for a pittance on the eve of the 2022 general elections. He needed the alley to complete his plan to turn Villa Rosa into a €300 million project.

The Shift has now confirmed that governors Odette Lewis, an architect by profession and the wife of Labour’s Organising Secretary William Lewis, and Rebekah Borg, representing the PN opposition on the Board, objected to the continuation of the process. They insisted the tender should be scrapped.

Both insisted that the tender should be scrapped as the value at which it was issued made no sense and did not take into consideration its development potential.

If the government wanted to give the alley to Tal-Francġż, it should do so through a parliamentary resolution for the sake of transparency.



Lands Authority governors Odette Lewis and Rebekah Borg objected to the tender.

Despite these strong objections, the two governors were overruled by Chairman John Vassallo, backed by CEO Robert Vella.

Instead of pausing the process for further deliberations on the controversial tender, Vassallo decided that most of the board agreed to award the tender to Tal-Francġż for less than the price of a one-bedroom flat.

*The governors present who did not intervene and backed the chairman's stand were Ernest Azzopardi, Lauren Ellul, Joseph Scalpello, Cleaven Tabone, Paul Mifsud and Labour MP Alex Muscat. **They were all appointed by Prime Minister Robert Abela.***

The Shift revealed that a valuation report drawn up by three veteran architects for the Lands Authority concluded that the 620-square-metre alley had a market value of €2.9 million. Yet it was given to Camilleri for just €134,000.

The tender closed two days before the general elections, and Camilleri, through his company, Garnet Investments Ltd, was the only bidder.

Investigations by The Shift showed that the Lands Authority and Camilleri held various meetings before the tender was issued, designed explicitly for Tal-Francġż and his project.

Instead of issuing the alley for an outright sale, as is standard practice, the tender specified that "the passage cannot be obstructed with any structures up to the height of 5.5 metres."

This meant that Camilleri could use the alley, giving him the right of passage to his massive project from the shoreline of St George's Bay. He could even build his towers, one as high as 34 storeys over the alley and join the two sides of his 50,000 square metre Villa Rosa grounds intersected by this alley.

This tender and its manoeuvres by the Lands Authority and senior government officials are now part of an ongoing investigation by the National Audit Office (NAO) called for by several NGOs.

Just a few weeks ago, Prime Minister Robert Abela ordered the Planning Authority to change the planning rules of the Villa Rosa site to accommodate Camilleri's project.

Without the change in the local plan, Camilleri's project could not happen.

F'dan il-kaz skandaluż, Robert Vella bhala CEO tal-Lands Authority u in rapprezentanza tal-istess, approva u kien strumentali biex **art pubblika b'valur ta' kwazi €3,000,000 inghatat lill-privat għall-prezz irrizzorju ta' €134,000 biss.**

Ferm u ferm inqas minn kemm jiswa flus appartament zghir fl-istess zona.

Telf deliberat, apposta, intenzjonat, b'kolluzjoni ma' terzi da parti ta' Robert Vella a skapitu tal-erarju pubbliku ta' iktar minn €2,860,000.

Dawn huma kollha ragunijiet impellenti li għandhom jikkonvincu 'l Magistrat Inkwirenti biex jiskatta *"in genere"* mill-ikatr fis sabiex kull suggett materjali tad-delitti imwettqa, minn Robert Vella b'kolluzjoni ma' nies fis-setgha u b'qawwa finanzjarja ingenti f'dan il-kaz ukoll.

9) Illi fis-27 ta' Novembru 2024 deher is-segweni artiklu f'**TheShiftNews**:

<https://theshiftnews.com/2024/11/27/lands-authority-approves-the-transfer-of-armier-lido-for-a-pittance/>

"Lands Authority approves the transfer of Armier Lido for a pittance

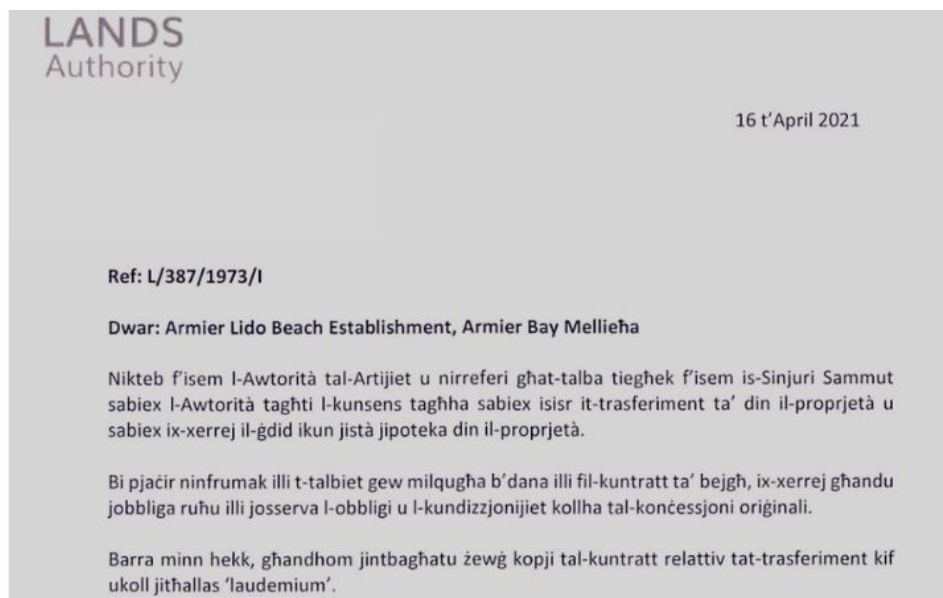
Government to get just €20,000 from €2 million deal

The Lands Authority has consented to the €2 million transfer of a public lido in Armier following a request by the concession holders.

This transfer of an original 50-year concession will give the government just €20,000 in compensation, even though the new owners are expected to make millions from the agreement's remaining 30 years.

Investigations by The Shift show that Lands Authority [CEO Robert Vella](#) informed the private owners in 2021 that they were allowed to transfer their original 2005 concession for the Armier Lido, now known as Palm Beach, located in the bay of Little Armier.

The Lands Authority's only condition is that a laudemium (compensation owed to the concessionaire) be paid to the government for this transfer, which amounts to a maximum of a one-year ground rent of the lido, or less than €20,000.



The Lands Authority consented to the deal.

*The concession's new owners, G3 Finance Plc — controlled by the owners of Mel-lieha's Pergola Hotel — have said they spent €2 million on the transfer, primarily in payments to the original owners of the conceded public property, **but the public will gain next to nothing from the deal.***

Sources at the Lands Authority described the latest transfer of a public conces-sion as “another example of how private businessmen are being allowed to make a killing from valuable public land and amenities with the authorities’ consent.”

According to the original 2005 contract, seen by The Shift, the transfer of the lido could only happen with the written consent of the Lands Authority, a per-mission which is not usually granted if it does not make economic sense for the government.

Our sources explained that the Authority had every right to withhold its consent and take back the public property if the original concessionaires were no longer interested. Instead, it permitted them to make good money by selling their rights to others.

The government is only legally permitted to issue new public concessions by way of tender or parliamentary resolution, but a loophole exists in the transfer of pub-

lic concessions, and businessmen have been arranging such deals for the last several years with the help of top Lands Authority officials.



Daniel Grima – Managing Director G3 Group

The Palm Beach Lido's 50-year concession dates back to 2005, when an agreement was signed with VSV Ltd following a tender.

VSV Ltd is owned by Vincent and Sarah Vella from Mellieha, who also own Adventure Camping and Leisure Ltd.

The company has since been dissolved, and the concession somehow ended up in the possession of Saviour Sammut, Cynthia Sammut, and Claire Calleja, co-owners of Eight Eleven Ltd. This company has accumulated massive debts.

The G3 Group, owner of the Pergola and Solana Mellieha hotels, announced its acquisition of the Armier Lido for €2 million a few months ago, adding that it intended to open a beach restaurant, bar, and other commercial spaces.

When asked to explain how the company acquired the public concession without a new tender, managing director Daniel Grima did not provide answers.

Lands Authority CEO Robert Vella and chairman John Vassallo also [chose not to reply to questions from The Shift](#).

Following public pressure from PN MPs Rebekah Borg and Stanley Zammit, Minister for Lands Stefan Zrinzo Azzopardi admitted in parliament that the Lands Authority had permitted this private deal on public land but failed to provide further details."

Dan il-kaz hu kaz serjissimu fejn Robert Vella abdika apposta u bi hsieb li jidher kriminuz mid-doveri tieghu ta' ufficjal pubbliku sabiex jivvantaggja b'mod grossolan, illegali u b'qerq ghall-erarju pubbliku 'l privat.

Hu minn ewl id-dinja li ma kien hemm ebda raguni ekonomika jew socjali li setghet waslet biex il-Gvern permezz ta' Robert Vella jaghti l-kunsens tieghu ghal dan it-trasferiment.

Kellu kull dritt u dover, anzi, il-Gvern li jiehu lura din l-art pubblika f'idejh biex imbaghad johroh sejha pubblika biex jimmassimizza l-qligh ghall-Gvern, minflok l-€20,000 mizeri li dahhal.

Imma minflok ma ghamlet hekk, il-Lands Authority permezz ta' Robert Vella qabdet u ghaddiet l-art taghha stess (mizmuma suppost f'isem il-pubbliku) minghajr lanqas biss sejha pubblika.

Hu minn ewl id-dinja li mexxej ghaqli u nadif tal-Lands Authority kien johrog sejha pubblika ghal din l-art pubblika, u l-Gvern kien idahhal ferm u ferm u ferm iktar mill-€20,000 biss li dahhal.

Ir-raguni ghala Robert Vella ghazel li jaghmel hekk, u jekk kienx minhabba tixhim, tista' tiddeterminah biss Inkjesta Magisterjali, jekk din l-umli talba tintlaqa'.

10) Fis-16 ta' Dicembru 2024 deheret din l-ahbar f'**TheShiftNews**:

“Malta’s land bonanza: How public wealth fuels private fortunes

Controversial deals signed off by Lands Authority CEO Robert Vella reveal a pattern in which valuable and limited public land is sold for a pittance, with a total lack of accountability, as more deals continue to be signed.

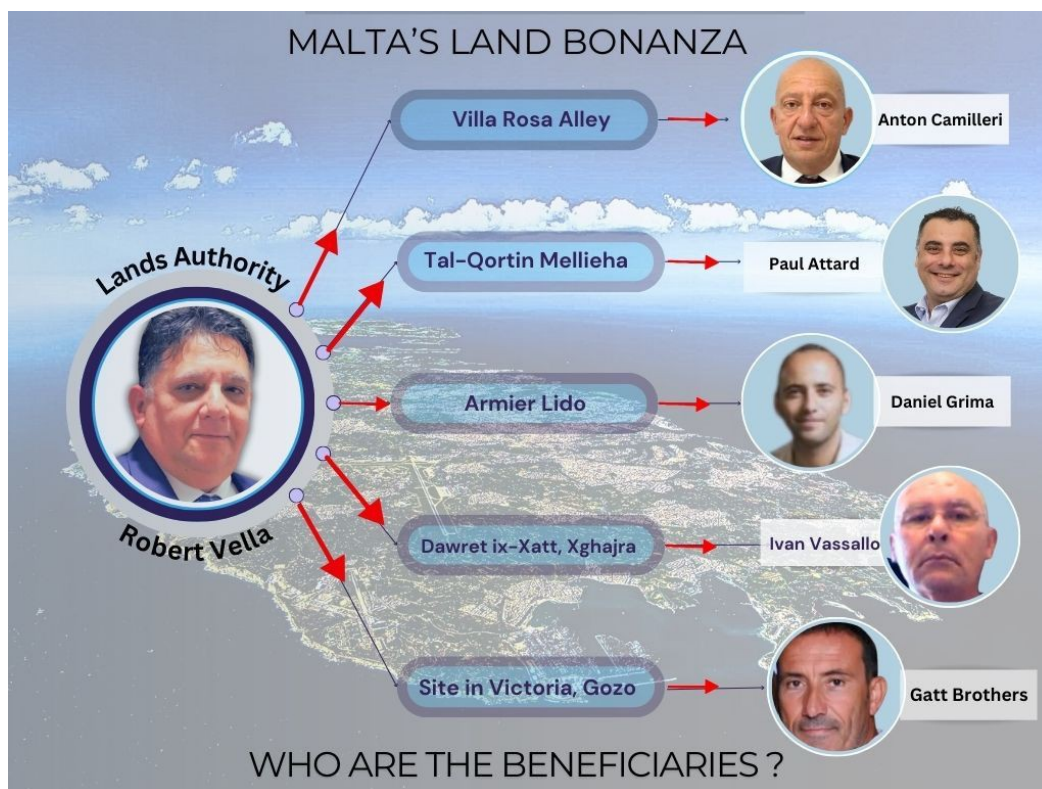
From the golden sands of Armier to beachside concessions, the Villa Rosa alley to the green spaces of Mellieħa, and the coastline of Xgħajra, a troubling pattern emerges: questionable deals under the stewardship of the Lands Authority.

These arrangements have one glaring constant: Lands Authority CEO Robert Vella signing off deals and giving away prime public land as questions arise about what he stood to gain.

Vella’s leadership of the Lands Authority has resulted in a decline in public accountability, with major deals benefitting particular developers that remain unexplained. Even the developers are complaining, saying the rules should be the same for everyone.

Appointed in 2021, with over 35 years of public service and a degree in Lands and Environmental Planning, Vella’s tenure has been marred by allegations of shady deals.

The Shift is highlighting only some of the most controversial in recent years. Despite press reports on these deals, no action has been taken to protect public land or even justify decisions.



Some of Robert Vella's controversial deals.

Controversial deals

The transfer of Armier's Palm Beach Lido illustrates the failings of Malta's governance, as private interests are served at the public's expense. The government got €20,000 from a €2 million deal.

The Lands Authority approved the concession's transfer to G3 Finance Plc, gifting the company a 30-year windfall. G3 Finance is controlled by the owners of Mellieha's Pergola Hotel, including Daniel Grima, the managing director.



Palm Beach Lido in Armier.

In St George's Bay, a public alley was sold for just €134,000, far below its €3 million valuation. Anton Camilleri, known as Tal-Franciz, acquired it to expand his €300 million Villa Rosa development in St Julian's, which includes 34-storey towers.

Lands Authority Chairman John Vassallo and CEO Robert Vella overruled objections from governors Odette Lewis and Rebekah Borg. This deal sparked public debate, but the Lands Authority pushed it through despite public concern.

Governors who backed the Lands Authority decision included Ernest Azzopardi, Lauren Ellul, Joseph Scalpello, Cleaven Tabone, Paul Mifsud, and Labour MP Alex Muscat.



The alley (in red) was sold to Anton Camilleri for a fraction of its value.

A 4,000-square-metre green plot in Mellieħa was sold to developer Paul Attard, Secretary General of the Malta Developers Association, in another of these deals.

He agreed to pay €380,000 annually through a lease-to-buy deal for a €50 million project. The Lands Authority is refusing to disclose crucial information on the sale of the government plot in the area known as Tal-Qortin.

Attard, a key player in GAP Holdings, has profited significantly from several government land deals, like the seafront plot he acquired in Qajjenza.



The large plot in Mellieha acquired by Paul Attard despite public opposition.

Land at the cost of public welfare

Another case involves a 250-square-metre site in Victoria, Gozo, illegally occupied by Ronnie and William Gatt of Gatt Tarmac Ltd.

Their occupation was legitimised through a tailored tender, allowing them to profit from apartments and penthouses they illegally built on public land. Before moving into property, the Gatt brothers made their wealth in the tarmac industry.

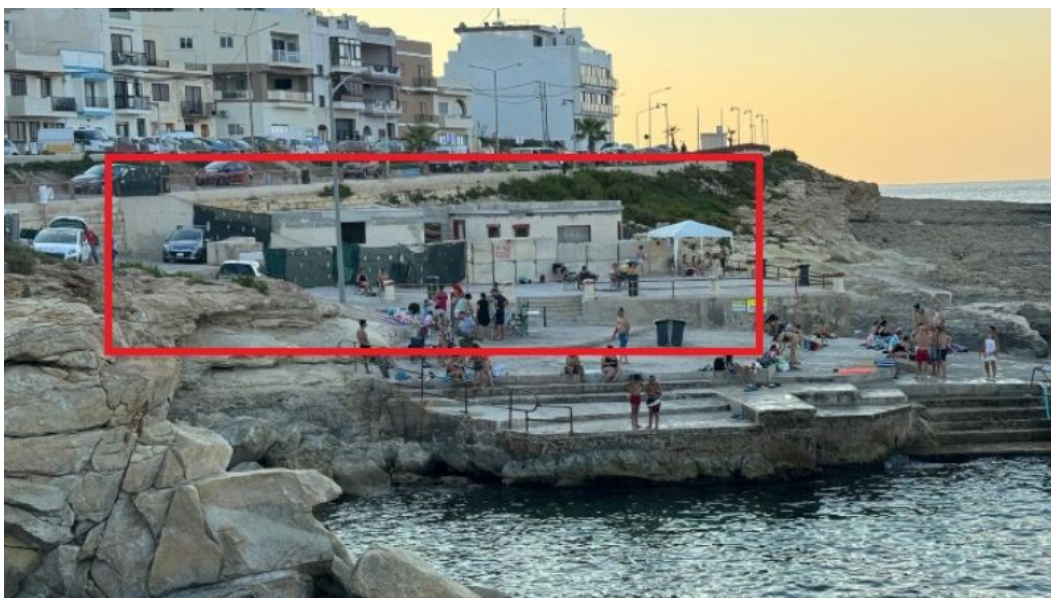
An investigation showed that a tender issued for the sale of public land last January had already been compromised before its publication.



The block of flats was built on public land after the developers claimed they owned it.

The Xghajra waterfront concession granted to Ivan Vassallo of Technoline has also raised serious questions about [the manoeuvres by the Lands Authority](#) to help Pierre Sladden acquire a seaside property he planned to develop into a restaurant.

The land concession, awarded by the Lands Authority, originally belonged to a relative of Pierre Sladden, who had long sought to buy it, only to see the property transferred to Vassallo's Eurybates Ltd after government intervention.



The Xghajra premises on the water's edge.

Vassallo and Sladden were charged with corruption and money laundering in relation to the corrupt Vitals hospitals deal, which led to a freezing order on their assets.

This troubling pattern of land deals continues unchecked, with the Lands Authority consistently failing to be held accountable for the loss of public assets and the unfair level playing field the interventions of its CEO have created.

L-esponent ghamel kalkolu bazilari mill-informazzjoni li hija disponibbli grazzi għall-dawn l-ahbarijiet rappurtati hawn fuq dwar kemm tilef flus l-erarju pubbliku (kemm gie iffrodat u misruq, jigigfieri) bl-agir kriminuz ta' Robert Vella minn dawn il-kazijiet biss.

F'inqas minn 3 snin, Robert Vella, ufficjal pubbliku, bl-agir tieghu qarraq u halla l-erarju pubbliku jkun imqarraq b'somma strabiljanti: bejn €20 MILJUN u €50 MILJUN:-

Fl-agħar ipotezi:

	Paid		valuation	difference
Armier Palm Beach Lido	€20,000		€2,000,000	€1,980,000
St George's Bay alley	€134,000		€3,000,000	€2,866,000
Paul Attard, Plot in Mellieħa	€380,000	x 15 years	€50,000,000	€44,600,000
Ronnie and William Gatt of Gatt Tarmac	€16,995	annually, redeemable within the first 15 years		
Ivan Vassallo Xghajra concession	€30,500			
Total	€581,495			€49,446,000

	Paid		valuation	difference
Armier Palm Beach Lido	€20,000		€2,000,000	€1,980,000
St George's Bay alley	€134,000		€3,000,000	€2,866,000
Paul Attard, Plot in Mellieħa	€380,000	x 15 years	€20,000,000	€14,600,000
Ronnie and William Gatt of Gatt Tarmac	€16,995	annually, redeemable within the first 15 years		
Ivan Vassallo Xghajra concession	€30,500			
Total	€581,495			€19,446,000

Fl-ahjar ipotezi:

Ghall-esponenti, telf b'qerq intenzjonat, f'assocjazzjoni kriminali ma' terzi, ta' bejn €20 miljun u €50 miljun ghall-eraru pubbliku huwa xokkanti u jitlob li tiskatta Inkjesta Magisterjali mill-iktar fis.

F'pajjizna l-esponent jaf min tressaq 'l Qorti fuq akkuza li seraq landa tonn taz-zejt u wehel 6 xhur prigunerija, ghax kien homeless. F'pajjizna hemm ufficjali pubblici li gew ikkundannati prigunerija effettiva wara li instabu hatja ta' embezzlement f'ammont ta' inqas minn €4,000 u b'interdizzjoni generali perpetwa imposta fuqhom.

Pero tressqu ghax il-Pulizija ghamlu xogholhom. Kieku ma tressqux ma kienux jinstabu hatja.

F'dawn il-kazijiet skandaluzi fejn il-qerq u l-konsegwenti hasil ta' flus huwa ta' bejn €20 miljun u €50 miljun b'dannu ghall-kaxxa ta' Malta, u dan bl-awtur ikun ic-CEO tal-Lands Authority innifsu, fejn il-Pulizija ghalqu halqhom, widnejhom u ghajnejhom, qed ikollu jkun l-esponet li jagixxi u jdur fuq il-Magistrat Inkwirenti.

L-esponent huwa ben konxju ta' x'qed jitlob u li jekk din it-talba tintlaqa', jinkixef l-ghatu fuq xibka kriminali mifruxa b'gheruq fil-fond, u li tinvolvi l-iktar nies b'sahhithom politikament u finanzjarjament fil-pajjiz.

L-esponent irid li sa fejn tippermettilu l-ligi, u sakemm ghadha tippermettilu l-ligi li jaghmel dan, huwa jadixxi l-Magistrat Inkwirenti u jitolbu li galadarba r-rekwiziti kollha tal-ligi qed ikunu sodisfatti minnu, tiskatta mill-iktar fis l-*'in genere'* sabiex kull sugett materjali tad-delitti inkwistjoni jkun ippreservati.

Ovvjament, l-*'in genere'* mhux ser tistabilixxi hija jew innocenza. Hija l-gbir tal-provi biss.

Huwa biss **wara u jekk** jinstabu provi bis-setgha tal-Magistrat Inkwirenti li jkunu jistghu eventwalment jiskattaw proceduri kriminali kontra kulmin ikun involut. Pero biex naslu hemm jehtieg li l-ewwel jigu ippreservati l-provi kollha u s-suggett materjali tad-delitti.

B. Lok ta' Inkjesta Magisterjali abbazi tal-Kodici Kriminali, tal-Kap.373, tal-Public Procurement Regulations (S.L. 601.3), l-Avviz Legali 373.01 u tal-Kap.601 tal-Ligijiet ta' Malta.

Il-fatti pubblici hawn fuq esposti minn gurnalizmu investigattiv maghdud ma' fatti fid-dominju pubbliku, fuq medda ta' xhur u li qatt ma gew michuda mill-amministrazzjoni pubblika u MEHUDIN FLIMKIEN (appuntu l-*pattern*), jindikaw agir ripetitiv, insistenti, konsistenti u kontinwu li fuq bazi *prima facie* jindika li **Robert Vella, ic-Chief Executive Officer tal-Lands Authority deliberatement naqas milli jhares l-interessi tal-amministrazzjoni pubblika (li suppost dmirha huwa li thares l-erarju pubbliku) biex jivvantaggja bil-qawwi lill-interessi privati.**

Fi kliem iehor, agir kriminali imwettaq b'intenzjonijiet kriminali.

Ghalhekk:-

Id-denunzjant identifika u qed jiddentifika bil-gurament tieghu lil:

1. Robert Vella, CEO tal-Lands Authority bhala persuna suspettata (huwa ufficjal pubbliku) li wettaq fuq medda ta' xhur, u allura b'mod kontinwu u kontinwat numru ta' delitti fuq bazi *prima facie* li jehtiegu jkunu investigati.

C. BAŻI u FINI GHAL *IN GENERE* u ARTIKLI RELEVANTI

Il-fatti hawn fuq esposti jagħtu lok, żgur fuq bażi ħafna iktar minn dik sempliċi ta' *prima facie* li huwa l-livell ta' prova rikjest għal fini tal-art.546(4A) tal-Kodici Kriminali biex issir il-prova tal-*"in genere"* fil-konfront ta' **Robert Vella, CEO tal-Lands Authority**, sabiex jiġi ippreservat is-sugġett materjali tar-reati u jiġu ippreservati l-provi kollha MILL-IKTAR FIS.

Għax huwa BISS bl-elevar tas-servers tal-ufficju ta' Robert Vella u tal-Estate Management Division u ufficji ohra tal-Lands Authority, tal-mobile phones u komunikazzjoni elettronika bejn il-persuni imsemmijin hawn fuq li jista' jiġi ippreservat is-sugġett materjali tad-delitti imsemmija.

Sabiex jistrada ahjar lill-Magistrat Inkwirenti, l-esponent qed jindika hawn il-lista ta' delitti li huwa jemmen li fuq bażi *prima facie* gew imwettqa u li allura kull prova, kull tracca, kull indizju, kull dokument, kull cirkostanza rilevanti, biex setghu twettqu, għandhom ikunu ippreservati u mahzuna taht l-awtorita ta' l-*in genere*.

Il-lista ta' delitti li għandhom ikunu l-baży tal-*in genere*, sa fejn jista' jara rilevanti l-esponenti huma dawn:

Art. 18, 42, 48A, 115, 121A, 121B, 121D, 124, 125, 126, 127, 135, 180, 188, 293 (aggravat bl-art.141), 294, 308, 309, 310 (aggravat bl-art.141) tal-Kodici Kriminali,

art. 2 u 3 tal-Kap.373, art. 7(10) tal-Avviz legali 373.01,

art. 216 tal-Avviz Legali 601.3,

u l-Kap.601 tal-Ligijiet ta' Malta;

(għall-kompletezza għandha ssir referenza għall-art.13 tal-Att dwar l-Interpretazzjoni meta qed jiġi interpretat l-art.121D tal-Kap.9)

Qabel ma jkompli, l-esponent qiegħed umilment jinvoka l-**Kap.601 tal-Ligijiet ta' Malta u senjatament l-artiklu 2:**

"2. accounting officer" means a person holding or acting in the office of a Permanent Secretary, Head of a government department or a Financial Controller and includes every person who is charged with the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any public moneys, or who is charged with the duty of disbursing, or who does in fact disburse, any public moneys, and every person who is charged with the receipt, custody or disposal of, or the accounting for, public stores, or who in fact receives, holds or disposes of public stores";

D. Spjega tal-artikli tal-Ligi iccitati

Mhux għax huwa obligat *ex lege* li jagħmel dan, ir-rikorrenti qiegħed jinsenjola uħud mill-artikli tal-Kodiċi Kriminali li raġjonevolment jikkombaċċjaw mal-fatti hawn esposti u kif Inkjesta Maġisterjali tista' raġjonevolment issib li dawn ġew miksura minn Robert Vella, uffiċjal pubbliku li dmiru hu li jhares l-interess nazzjonali u mhux tal-privat.

Ir-rikorrenti jemmen li l-fatti hawn fuq esposti jindikaw suspett raġjonevoli ibbażat fuq fatti u ċirkostanzi raġjonevoli li ġew miksura s-segwenti artikli tal-Kodiċi Kriminali:

Qabel xejn, l-**Artiklu 18** Kodiċi Kriminali:

“Meta d-diversi atti magħmulin mill-ħati, ukoll jekk fi żminijiet differenti, ikunu jiksru l-istess dispożizzjoni tal-liġi jew dispożizzjonijiet relatati tal-liġi, u jkunu ġew magħmula b’riżoluzzjoni waħda, dawn l-atti jitqiesu bħala reat wieħed, imsejjah reat kontinwat, iżda l-piena tista’ tiżdied minn grad sa żewġ gradi”

Ir-rikorrenti jemmen umilment li d-diversi fatti u atti indikati hawn fuq juru suspett raġjonevoli li kien hemm riżoluzzjoni waħda fil-ksur tal-istess disposizzjoni tal-liġi jew dispożizzjoni relatata tal-liġi. Tant kemm il-*course of conduct* kien wieħed lineari, kontinwu, kontinwat, ripettitiv, li huwa impossibbli li dawn kollha kienu kazijiet minn Vella ta’ zbalji genwini, ta’ malamministrazzjoni jew traskuragni.

Verament hadd mis-sema ‘l isfel m’hu perfett. Kulhadd soggett għall-izball uman, tassew.

Izda mhux kulhadd huwa kriminal u/jew korrott.

Mehudin flimkien, il-fatti esposti fl-ewwel parti ta’ dan ir-rikors, grazzi għal gurnalizmu investigattiv u indipendenti, ma jhallu ebda dubbju f’mohh l-esponenti li hawn si tratta ta’ agir kriminali, imwettaq deliberatament u sistematikament.

It-telf ‘l erarju pubbliku ta’ ghexieren ta’ miljuni ta’ euro fua medda ta’ zmien (relattivament) qasir minhabba u bl-agir intenzjonali ta’ Robert Vella ma jhalli ebda dubbju f’mohh l-esponent li hawn si tratta ta’ assocjazzjoni kriminali, li Robert Vella hu partecipi fiha flimkien ma’ terzi li jistghu jkunu identifikati biss minn Magistrat Inkwirenti bis-setghat kollha li taghtih il-liġi.

Terzi li probabilmment jinkludu certu negozjanti kbar u politici fl-oghla kuriduri tal-poter fil-Gvern li minghajr il-barka u bl-gharfien tagħhom, Vella ma setax wettaq dan kollu.

Artiklu 42 tal-Kodici Kriminali:

“Persuna titqies kompliċi f’delitt jekk hija -

(a) tkun tat ordni lil haddieħor biex jagħmel id-delitt; jew

(b) tkun ġieghlet li d-delitt isir b’mezz ta’ rigali, wegħdiet, theddid, maniggi, jew eghmil qarrieqi, inkella b’abbuż ta’ awtorità jew setgħa, inkella li tkun tat istruzzjonijiet biex isir id-delitt; jew

(ċ) tkun tat armi, għodod jew mezzi oħra li jkunu ġew użati fl-egħmil tad-delitt, meta kienet taf li kellhom hekk jiġu użati; jew

(d) għad li ma tkunx waħda mill-persuni msemmija fil-paragrafi (a), (b) u (ċ), b’xi mod li jkun, xjentement, tkun għenet jew assistiet lill-awtur jew lill-awturi tad-delitt fl-atti li bihom id-delitt ikun ġie ippreparat jew ikkunsmat; jew

(e) tkun xewxet lil haddieħor inkella saħħet il-volontà tiegħu sabiex jagħmel id-delitt, jew wegħdet li wara l-fatt tassistih, tieqaf miegħu jew tikkompensah”

Ir-rikorrent jemmen li l-fatti u atti indikati hawn fuq juru suspett raġjonevoli ta’ komplot kriminali, għax Robert Vella xjentement għen jew assista lil terzi biex l-erarju pubbliku jitlef għexieren ta’ miljuni ta’ euro.

L-artiklu 48A tal-Kodiċi Kriminali:

“(1) Kull min f’Malta jassoċja ruġu ma’ xi persuna jew persuni f’Malta jew barra minn Malta bil-għan li jagħmel delitt f’Malta li għalih hemm il-piena ta’ prigunerija, ikun ħati tar-reat ta’ assoċjazzjoni biex jagħmel dak ir-reat.

(2) L-assoċjazzjoni msemmija fis-subartikolu (1) tibda teżisti mill-waqt li fih xi sura ta’ azzjoni tkun li tkun tiġi ppjanata jew miftiehma bejn dawk il-persuni.

(3) Kull min jinsab ħati ta’ assoċjazzjoni taħt dan l-artikolu jista’ jeħel il-piena għal delitt ikkunsmat li jkun l-għan tal-assoċjazzjoni, mnaqqsa b’żewġ gradi jew tlieta.

(4) Għall-għanijiet tas-subartikolu (3), sabiex tiġi stabbilita l-piena għar-reat shiħ li jkun l-għan tal-assoċjazzjoni, għandhom jitqiesu ċ-ċirkostanzi kollha li jaggravaw dak ir-reat

Ir-rikorrenti jemmen li hu iktar minn raġjonevoli s-suspett li Robert Vella (u dan iktar u iktar kif għandu jiġi ippruvat b’mod forensiku fl-Inkjestta jekk dan ir-rikors ikun milqugh), assoċja ruġu ma’ persuni ohra biex iwettqu delitt f’Malta. Huwa umanament impossibbli li l-agir kriminuz deskritt f’kull wiehed mill-artikli esposti fl-ewwel parti ta’ dan ir-rikors twettaq minnu wahdu.

Dan hu wettqu b’diversi atti bl-istess riżoluzzjoni kriminali u bi ksur tal-istess dispożizzjonijiet tal-liġi għal diversi drabi, zgur wara l-2021, u wettaq dawn l-atti bħala komplici fit-termini tal-artiklu 42 tal-Kodiċi Kriminali u bħala parteċipant f’assoċjazzjoni kriminali ai termini tal-artiklu 48A tal-Kodiċi Kriminali.

Per eżempju, fis-sentenza **Il-Pulizija vs Fabio Julian (16.12.2014)** per Maġistrat Dr Hayman, konfermata fl-appell, jingħad hekk:

“Mela kjarment u bla dubbju, jirrizulta car illi l-Ligi trid illi din l-assocjazzjoni tibda tissusisti l-mument illi “xi sura ta’ azzjoni” tiġi miftehma jew pjanata. Fit-test Ingliż, dan jaqra “from the moment in which any mode of action whatsoever is planned or agreed upon between such persons”.

Mela certament il-pjan necessarju hawn jista', anke biex ikun sodisfatt dan ir-reat, ikun wiehed anke miftuh u mhux wiehed illi jinhtieg illi jkun pjanat sa lanqas dettall bir-reqqa, basta jkun hemm il-hsieb komuni bejn zewg partijiet, u izjed illi jaqblu u jibdw u jhejju certu pjanijiet biex jigu miftehna anke l-modalitajiet ta' azzjoni biex jigi kommess ir-reat. Necessarju l-qbil bejniethom ghal skop u ghan komuni. Ir-reat precedentement ezaminat jitlob fih innifsu izjed kompleksita' ta' struttura ta' ghaqda u kif jispjega sew l-Antolisei ghandu mpatt aktar prolongot u kompleks fuq is-socjeta', u minhabba ghaqda b'ghan ta' reita', jissoxxita' aktar alarm u ansjeta' pubblika.

Dr Brincat fil-fatt issugerixxa li hawn gie addebitat reat alternattiv. Dan ghalkemm jista' jkun il-kaz, pero mhux necessarjament hu hekk. L-assocjazzjoni taht l-Artikolu 48A tista' treggi bhala reat minghajr ma jkun hemm dik l-"associazione per delinquere", mahsub taht l-Artikolu 83A tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Il-"conspiracy", assocjazzjoni tezisti anke minghajr il-komplessita' ta' struttura u pjanijiet ta' ghaqda jew organizzazzjoni.

Fis-sentenza tal-Qorti tal-Appell Kriminali (Superjuri) fil-kawza fl-ismijiet "Ir-Repubblika ta' Malta vs Godfrey Ellul", Nru 10/2000, datata 17 ta' Marzu, 2005, il-Qorti ghamlet referenza ghal Archbold Criminaln Pleading, Evidence and Practice 2003, dwar dan ir-reat in ezami, biex jigi miftiehem ahjar dan ir-reat:

"The essence of conspiracy is the agreement. When two or more agree to carry their criminal scheme into effect, the very plot is the criminal act itself: Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317; R. v. Warburton (1870) L.R. 1 C.C.R. 274; R. v. Tibbits and Windust [1902] 1 K.B. 77 at 89; R. v. Meyrick and Ribuffi, 21 Cr.App.R. 94, CCA. Nothing need be done in pursuit of the agreement: O'Connell v. R. (1844) 5 St.Tr.(N.S.) 1."

"The agreement may be proved in the usual way or by proving circumstances from which the jury may presume it: R. v. Parsons (1763) 1 W.Bl. 392; R. v. Murphy (1837) 8 C. & P. 297. Proof of the existence of a conspiracy is generally a "matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them": R. v. Brisac (1803) 4 East 164 at 171, cited with approval in Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317."

Fil-kawza fl-ismijiet "Ir-Repubblika ta' Malta vs Stephen John Caddick and Philip Walker; Omissis", datata 6 ta' Marzu, 2003, il-Qorti qalet hekk dwar id-definizzjoni u l-elementi ta' dan ir-reat:

"As pointed out by appellants, the First Court correctly stated that the three elements that had to be proved for the crime of conspiracy to result, were the agreement between two or more persons, the intention to deal in drugs and the agreed plan of action; and, as also correctly stated by the First Court, "it is irrelevant whether that agreement was ever put into practice". But the First Court then continued:

"Obviously if there is evidence which shows that the agreement was put into practice, if there is evidence which shows that there was dealing in drugs in Malta,

then that is a circumstance which shows that there has been this conspiracy. That this is a circumstance which proves that the conspiracy had existed. But if for argument's sake, there is no evidence that the agreement was put into actual practice, then you will still have the crime of conspiracy complete. So do not think that it is an essential element of the crime to have to prove up to the level of moral conviction that there was the actual dealing of drugs in Malta".

.....

Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed "from the moment in which any mode of action whatsoever is planned or agreed upon between" two or more persons (section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement."

Mela hawn l-evidenza migjuba trid tkun dwar ftehim, fil-kaz taghna in ezami mhux dwar droga, imma frodi tal-Casino, u eventwali reciklagg fil-fatt biex dan ir-reat jissusisti ma hemmx ghalfejn jirrizulta tali frodi per se'. Ir-reat huwa kkunsmat appena jsir dan il-ftehim li sehh b'ghan komuni, ftehim dwar 'il kif ghandu jigi milhuq l-ghan innifsu.

Ghandu wkoll dan il-ftehim ikun akkumpanjat ma' element iehor biex dan ir-reat ta' assocjazzjoni jkun kostitwit.

Hawn il-Qorti taghmel referenza ghal dak illi qalet il-Qorti tal-Appell Kriminali Superjuri fil-kawza fl-ismijiet "Ir- Repubblica ta' Malta vs Edgar Pena" datata 5 ta' Dicembru, 2012, fejn il-Qorti qalet illi mhux biss jinhtieg ikun hemm "meeting of the minds", izda l-meeting minds irid kun mhux biss ghall-ispacc ta' droga izda wkoll dwar il-mezzi, ossia modalitajiet, li ser jintuzaw sabiex isir dak l-ispacc.

Jghin mhux fiit il-fatt, dan bhala prova anke cirkostanzjali ta' tali ftehim, li fil-fatt dan il-ftehim tqieghed fis-sehh anke b'success!

Art.115 tal-Kodici Kriminali

(1) Kull uffic

*jal jew impjegat pubbliku li, in konnessjoni mal-kariga jew impieg tiegħu,
jitlob, jirc*

ievi jew jac

c

*etta għalih jew għal haddiehor xi rigal jew weghda jew offerta ta' xi rigal
fi flus jew f'utli iehor, jew ta' xi vantag*

g iehor, li għalihom huwa ma jkollux jedd, jeħel ”

Ir-rikorrenti jemmen umilment li l-fatti hawn fuq elenkati (minbarra ohrajn li zgur jistghu jigu misjiba u ippreservati fil-kors ta' Inkjesta Magisterjali) ragjonevolment juru s-suspett ragjonevoli li l-persuna suspettata/denunzjata, ircieva jew accetta għalih jew għal haddiehor xi rigal jew weghda jew offerta ta' xi rigal fi flus jew f'utli iehor, jew ta' xi vantagg iehor li għalih huwa ma kellux jedd.

Hawn qed nitkelmu fuq it-“tberbiq” deliberat, insensat, kontinwu, mifrux, ripetut ta' miljun kbar ta' euro minn fondi pubblici li ma setax isir minghajr il-barka u l-gharfien u l-approvazzjoni tal-persuna suspettata. U zgur ma sarx għall-ebda *quid pro quo*.

L-esponent jemmen li dawn il-kazijiet ma setghux kienu semplicement traskuragni jew inkompetenza grassa fil-gestjoni ta' fondi u assi pubblici, izda jaghti lok għal suspett serju ta' reati ta' korruzzjoni u riciklagg ta' flus.

Illi issa għal dak li għandu x'jaqsam mal-insenjament tal-Qrati taghna dwar id-delitt ta' korruzzjoni/tixhim, anke jekk MHUX rikjest mill-ligi, l-esponenti ser jinsenzjalaw ftit ġurisprudenza fuq dan id-delitt semplicement bħala gwida u għall-aħjar informazzjoni tal-Magistrat Inkwirenti.

Illi fis-sentenza fl-ismijiet **Il-Pulizija vs Saveria sive Saverin Sinagra** (Deċiża 30.06.2010 per Onor. Magistrat Dr. Edwina Grima), il-Qorti tal-Magistrati għamlet eżami funditus dwar ir-reat ravviżat bl-artikolu 115 tal-Kodiċi Kriminali:

“Illi minn ezami tal-artikolu 115 tal-Kodiċi Kriminali li jikkontempla r-reat ta' korruzzjoni jirriżulta illi l-elementi bażiċi li jridu jigu ippruvati huma essenzjalment erba' u cioe`:

1. *in-natura uffiċjali jew pubblika tal-impieg tal-persuna ikkonċernata.*³

2. *li dik il-persuna irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u dawn ma ikunux dovuti skond il-liġi.*⁴

3. *li dana jkun in konnessjoni mal-istess kariga jew impieg.*

4. *li l-iskop ikun illi l-persuna tagħmel jew ma tagħmilx id-dmir tiegħu/tagħha.*⁵

Illi b'rabta ma' din id-disposizzjoni tal-liġi, l-Avukat Ġenerali iċċita wkoll l-artikolu 120, fejn titqies bħala komplici il-persuna li tikkorrompi l-uffiċjal pubbliku.

Illi għalhekk l-ewwel element essenzjali għall-kummissjoni ta' dan ir-reat huwa n-natura uffiċjali jew pubblika tal-impieg tal-persuna li qed tiġi korrotta. Illi l-Professur Mamo fin-noti tiegħu dwar id-dritt penali iġhid: "The character of public officer or person employed under the Government is the first essential of this crime. The wording is very wide and embraces all officers or employees under the Government. ... It includes all public officers or employees whether their duties are judicial, ministerial or executive or mixed."

Illi l-artikolu 92 imbagħad jiddisponi testwalment illi:

"Taht il-frazi ġenerali 'uffiċjal pubbliku' jidhlu mhux biss l-awtoritajiet kostitwiti, ċivili u militari, iżda wkoll daww il-persuni kollha li huma maħtura skond il-liġi sabiex jamministraw xi parti tas-setgħa eżekuttiva tal-Gvern, jew biex jeżegwixxu xi dmir ieħor pubbliku impost mil-liġi, sew gudizzjarju kemm amministrattiv kif ukoll tax-xorta l-waħda u l-oħra."

Illi apparti għall-konferma mogħtija mix-xhud Mireille Mifsud, l-artikolu 28(5) ta' l-Att dwar l-Enemalta, Kapitolu 272 tal-Liġijiet ta' Malta, 60 li kien fis-sehh fiz-zmien tar-reati addebitati lill-imputat, kien

Dwar it-tieni element, il-persuna li tikkwalifika bħala uffiċjal jew impjegat pubbliku, trid tkun irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u li dawn ma jkunux dovuti skond il-liġi. Illi mill-provi akkwiziti ġie ampjament pruvat, li Pantallaresco kien jaċċetta hłasijiet li kienu jiġu mgħoddija lil mill-imputat, liema flejjes ċertament ma kienux dovuti lil skond il-liġi, għaliex dak li kien jagħmel ma kienx fl-ambitu tal-impjeg tiegħu jew bħala parti mid-doveri tiegħu.

Dan jorbot mat-tielet element essenzjali għall-kummissjoni ta' dan ir-reat u cioe` illi l-wegħda tal-flus trid tkun marbuta mal-kariga jew impieg ta' l-uffiċjal in kwistjoni. Ġie soddisfaċentement pruvat li Pantallaresco ġie magħzul mill-imputat minhabba l-impjeg tiegħu, dik ta' installer ta' meters fl-Enemalta, b'access liberu għal meters li kienu jkun digħa reġistrati

3 Vide ukoll Il-Pulizija vs Joseph Buhagiar (Appell, Deċiża 19 ta' Lulju, 1982).

4 Vide ukoll Il-Pulizija vs Lawrence sive Lorry Cuschieri et (Appell, Deċiża 25 ta' Lulju, 1986).

5 Vide ukoll Il-Pulizija v. Alfred Demicoli (Appell, Deċiża 2 ta' Mejju 1985).

fuqu.61 Kienet is-sengha ta' Pantalleresco li l-imputat identifika bħala għodda utili sabiex jinnegozja minn fuqha u jisfruttaha! L-imputat, il-korrutur, kien konsepevoli tal-kariga u impjeg ta' Pantalleresco, il-korrutt, tant li anke mal-konsumatur John Tanti kien iffissa appuntament sabiex is-sir it-tbagħbis f'jum meta Pantallaresco kien ikun fuq ir-rotta li tinkludi dik l-lokalita'.62

L-aħħar rekwizit imbagħad, li gie wkoll ampjament ppruvat, kien li l-uffiċjal in kwistjoni, Pantallaresco, gie imħallas biex jonqos milli jagħmel dak li kien fid-dmir illi jagħmel. Minflok ħares l-interessi tal-kumpanija, l-id li kienet qed tipprovdli l-ghijxien kwotidjan tiegħu u ta' familtu, ra kif għamel biex il-kumpanija tiġi derubata u mcaħħda minn dak dovut legalment lilha!

Fis-sentenza citata dik il-Qorti kompliet hekk:

.....Illi l-artikolu 120 iqis lill-persuna li tikkorrompi uffiċjal pubbliku bħala komplici fir-reat previst f'dan il-każ fl-artikolu 115. Illi l-liġi tagħti definizzjoni ta' min jitqies li huwa komplici fl-artikolu 42 fejn hemmhekk jiġu ikkontemplati hames sitwazzjonijiet fejn persuna tirrendi ruhha komplici.

Illi mill-qari ta' dina d-disposizzjoni tal-liġi jidher ċar illi f'kull ċirkostanza ikkontemplata irid ikun hemm 'l hekk imsejjaħ common design bejn l-awtur u il-komplici. Ma hux neċessarju, kif tikkontendi id-difiża illi l-komplici ikun għamel xi forma ta' qliegħ huwa innifsu u cioe' ikun kiseb xi vantaġġ finanzjarju ...

*Illi kif gie deċiż f'kawza fl-ismijiet **Il-Pulizija vs Mario Camilleri et.** deċiża fit-30 ta' Lulju 2009, mill-Qorti ta' l-Appelli Kriminali:*

"Il-korruzzjoni li dwarha qegħdin nitkellmu hi, skond id-duttrina prevalenti, karatterizzata minn ftehim volontarju bejn l-uffiċjal (jew impjegat) pubbliku u l-persuna li tikkorrompi (li, kif ingħad, hija kkunsidrata fil-liġi tagħna bħala komplici) permezz ta' liema ftehim jitwieled veru u proprju pactum sceleris."

Il-Professur Mamo ighid: "The briber or corruptor is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises." (sottolinjar tal-Qorti).

Il-Professur Mamo ikompli: Sections 114⁶ and 118⁷ deal with the crimes of bribery and corruption of public officers. ...

As it is only a public officer or employee who can sell away an act of public office, so it is only he that can be considered as the principal offender in the crime of corruption. The briber or corrupter is only an accomplice

6 Illum l-artiklu 115 tal-Kodiċi Kriminali.

7 Illum l-artiklu 120 tal-Kodiċi Kriminali.

in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises. And as the crime is completed by the mere acceptance, on the part of the public servant, of the reward or offer, so also it must be considered in respect of the corrupter.

Our Code at Sec.118 expressly applies to the corrupter the rules of complicity. If the crime of corruption is, therefore, completed by the unholy compact of the public servant and the private person, the latter is liable to punishment whether the corruption has as its object the performance by the public officer of his duty or his failure in such duty. And the punishment of the corrupter varies with that of the public servant. The consequences arising out of the personal circumstances of the public servant in the principal offender are, in their entirety, imputable to the accomplice: for this circumstance is an essential ingredient of the principal crime and an indispensable condition for its commission.

Illi mill-provi migjuba ma hemmx dubbju illi fil-kaz in diżamina kien hemm pactum jew ftehim bejn Martin Cilia La Corte u Paul Pantalleresco, is-sugġett passiv ta' dan il-korruzzjoni.

*F'sentenza oħra, **Il-Pulizija vs Alfred Attard**, wara li l-Qorti għamlet l-konsiderazzjonijiet tagħha dwar il-grad ta' prova li trid tilhaq il-prosekuzzjoni, konsiderazzjonijiet li jsibu applikazzjoni anke fil-kaz prezenti, iddecidiet:⁸*

Qabel ma din il-Qorti ser tiddiskuti l-fatti specie tal-kawża odjerna, thoss li għandha tfakkar lill-Prosekuzzjoni, li l-grad ta' prova li għandha tilhaq hu dak li ma jhalli ebda ombra dettat mir-raġuni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra, ma jistgħux jitqiesu bħala dubbji dettati mir-raġuni. Fi kliem ieħor dak li ġudikant irid jasal għalih huwa li, wara li jqis ċ-ċirkostanzi u l-provi kollha u b'applikazzjoni tal-buon sens tiegħu ikun moralment konvint minn dak l-fatt li trid tippo-va l-Prosekuzzjoni.

... Dwar t-tieni akkuża, u cioe dik ta' korruzzjoni ta' uffiċjal kif kontemplat fl-artikolu 115 tal-Kap 9 tal-Liġijiet ta' Malta, il-Qorti tagħmel referenza għal sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar t-tlettax ta' Marzu 1997 fl-ismijiet Il-Pulizija v Omissis Carmelo sive Charles Attard fejn intqal li bħala premessi fundamentali għas-sussistenza ta' dan r-reat, l- artikolu 115 tal-Kap 9 tal-Liġijiet ta' Malta, tippreċiza li:

"Jkun hemm r-reat ta' korruzzjoni meta kwalunkwe uffiċjal jew impjegat pubbliku jirċievi jew jaċċetta għalih jew għal haddieħor, xi rigal jew wegħda, jew xi offerta ta' xi rigal fi flus jew f'utili ieħor, jew ta' xi vantaġġ ieħor li għalihom huwa ma jkollux jedd u jippreċiza in oltre, li tali abbuż irid ikun sar in konnessjoni mal-kariga jew impjeg tiegħu ..."

8 Qorti tal-Magistrati (Malta) Bħala Qorti ta' Ġuikatura Kriminali, Deċiża 28.02.2005 per Onor. Magistrat Dr. Consuelo Scerri Herrera.

*Dik l-istess Qorti tal-Appell Kriminali fis-sentenza mogħtija nhar l-hdax ta' Diċembru 1956 fl-ismijiet Il-Pulizija v **Geraldo Sacco**, sostniet li:*

"Biex tkun tista tigi sostnuta l-korruzzjoni, hemm bżonn qabel xejn li jiġi stabbilit ness bejn l-aċċettazzjoni ta' flus jew utili ieħor u l-eżercizzju tal-kariga jew impjeg pubbliku."

L-artiklu 121A(2)(3) tal-Kodici Kriminali:

"121A. (1) Kull min iwiegħed, jagħti jew joffri, sew b'mod dirett sew indirett, xi vantaġġ mhux xieraq lil xi persuna oħra li tasserixxi jew tikkonferma li huwa jew hija jkunu kapaċi li jagħmlu xi influwenza mhux xierqa fuq il-mod kif tid-deċiedi xi persuna li hemm imsemmija fl-artikoli preċedenti ta' dan is-subtitolu u ta' xi persuna oħra, sabiex iġieghel lil dik il-persuna oħra tesercita dik l-influwenza, sew jekk dak il-vantaġġ mhux xieraq ikun għal dik il-persuna oħra jew għal xi hadd ieħor, għandu, meta jinsab hati, jehel il-piena ta' priġunerija għal żmien minn tliet snin sa sitt snin.

(2) Kull min jitlob, jirċievi jew jaċċetta xi offerta jew wegħda ta' xi vantaġġ mhux xieraq għalih innifsu jew għal xi hadd ieħor bil-ghan li jeżercita xi influwenza mhux xierqa bħalma hemm imsemmi fis-subartikolu (1) jehel, meta jinsab hati, il-piena stabbilita f'dak is-subartikolu.

(3) Ir-reati msemmija fis-subartikoli (1) u (2) jkunu saru għalkollox sew jekk il-kapaċità allegata li ssir influwenza mhux xierqa kienet jew ma kienetx teżisti, sew jekk l-influwenza tkun jew ma tkunx saret u sew jekk l-influwenza pretiża twassal jew ma twassalx għar-riżultat intiż."

Dan l-artiklu u delitt qed jiġi prospettat kontra Robert Vella peress li l-esponent jemmen li minn qari akkurat tal-fatti esposti fl-ewwel parti ta' dan ir-rikors jemergu, fuq bazi *prima facie*, l-fattispeċji ta' dan id-delitt. Huwa minn ewl id-dinja li l-agir sistematiku u illegali ta' Robert Vella f'kull wahda mid-deals esposti hawn fuq, jindika fuq bazi *prima facie* li huwa talab, irċieva jew accetta xi offerta jew wegħda ta' xi vantaġġ mhux xieraq għalih jew għal xi hadd ieħor bil-ghan li jeżercita xi influwenza mhux xierqa sabiex l-erarju pubbliku jkun iffrodat u misruq halli jgawdi indebitament il-privat.

Dan l-artikolu huwa msejjes fuq l-artikolu 12 tal-Konvenzjoni tal-Kunsill tal-Ewropa dwar il-Korruzzjoni.

Dan l-artikolu jgħid hekk:

Article 12 – Trading in influence ‘Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

U l-ispejja tiegħu fl-Explanatory Report hija din li ġejja:

“‘Article 12 – Trading in influence 64.

This offence is somewhat different from the other – bribery-based – offences defined by the Convention, though the protected legal interests are the same: transparency and impartiality in the decision-making process of public administrations. Its inclusion in the present Convention illustrates the comprehensive approach of the Programme of Action against Corruption, which views corruption, in its various forms, as a threat to the rule of law and the stability of democratic institutions. Criminalising trading in influence seeks to reach the close circle of the official or the political party to which he belongs and to tackle the corrupt behaviour of those persons who are in the neighbourhood of power and try to obtain advantages from their situation, contributing to the atmosphere of corruption. It permits Contracting Parties to tackle the so-called "background corruption", which undermines the trust placed by citizens on the fairness of public administration. The purpose of the present Convention being to improve the battery of criminal law measures against corruption it appeared essential to introduce this offence of trading in influence, which would be relatively new to some States.

65. This provision criminalises a corrupt trilateral relationship where a person having real or supposed influence on persons referred to in Articles 2, 4, 5, and 9 –trades this influence in exchange for an undue advantage from someone seeking this influence. The difference, therefore, between this offence and bribery is that the influence peddler is not required to "act or refrain from acting" as would a public official. The recipient of the undue advantage assists the person providing the undue advantage by exerting or proposing to exert an improper influence over the third person who may perform (or abstain from performing) the requested act.

"Improper" influence must contain a corrupt intent by the influence peddler: acknowledged forms of lobbying do not fall under this notion. Article 12 describes both forms of this corrupt relationship: active and passive trading in influence. As has been explained (see document GMC (95) 46), "passive" trading in influence presupposes that a person, taking advantage of a real or pretended influence with third persons, requests, receives or accepts the undue advantage, with a view to assisting the person who supplied the undue advantage by exerting the improper influence.

"Active" trading in influence presupposes that a person promises, gives or offers an undue advantage to someone who asserts or confirms that he is able to exert an improper influence over third persons.

66. States might wish to break down the offence into two different parts: the active and the passive trading in influence. The offence on the active side is quite similar to active bribery, as described in Article 2, with some differences: a person gives an undue advantage to another person (the 'influence peddler') who claims, by virtue of his professional position or social status, to be able to exert an improper influence over the decision-making of domestic or foreign public officials (Articles 2 and 5), members of domestic public assemblies (Article 4), officials of international organisations, members of international parliamentary assemblies or judges and officials of international courts (Articles 9-11). The passive trading in influence side resembles to passive bribery, as described in Article 3, but, again the influence peddler is the one who receives the undue advantage, not the public official.

What is important to note is the outsider position of the influence peddler: he cannot take decisions himself, but misuses his real or alleged influence on other persons. It is immaterial whether the influence peddler actually exerted his influence on the above persons or not as is whether the influence leads to the intended result."

Biex jiskatta l-paragrafu (3) tal-artikolu 121A irid li minn xi prova jkun jirriżulta tali intenzjoni. Jekk hemm provi ta' din l-intenzjoni, jsegwi li wieħed jista' jinstab hati taht l-artikolu 121A ukoll jekk il-kapċita' allegata ma kinitx teżisti.

Mela jekk fil-mument tal-ftehim, min jirċievi l-flus jkun għadu jikkontempla lil min ser itihom biex jista' juża l-influwenza tiegħu, ir-reat xorta jkun twettaq għaliex l-għan li ssir xi haġa li mhux xierqa diġa' qiegħed hemm u l-elementi kollha tar-reat ikun jissusistu minkejja li dak li jkun ikun għadu jħammem dwar min tista' tkun il-persuna addattata. **Ir-reat ukoll jitwettaq jekk wieħed jawniċina lil xi hadd biex jinfluwenzah iżda din l-influwenza ma ssehhx.**

Mis-sentenza **Il-Pulizija vs Raymond Ferris (17.3.2016)** mill-Qorti tal-Appell Kriminali:

*"Illi l-interpretazzjoni ta' din id-disposizzjoni tal-ligi giet esposta f'zewg sentenzi mogħtija mill-Qorti tagħna u cioe' wahda mogħtija mill-Qorti Kriminali fit-13 ta' Lulju 2006 fl-ismijiet **Ir-Repubblika ta' Malta vs Dr. Noel***

*Arrigo u it-tieni wahda deciza mill-Qorti ta' l-Appell Kriminali fis-17 ta' Settembru 2008 fl-ismijiet **Il-Pulizija vs Gino Zammit** fejn inghad:*

"Illi minn ezami ta' l-artikolu gdid 121A jemergu zewg reati separati. Dak kontemplat fis-subartiklu (1) huwa dak ta' persuna li twieghed, taghti jew toffri, xi vantagg mhux xieraq lil xi persuna ohra li tasserixxi jew tikkonferma li huwa jew hija jkunu kapaci li jaghmlu xi influwenza mhux xierqa fuq il-mod kif tiddeciedi xi persuna li hemm imsemmija fl-artikoli precedenti. Mela hawn ghandha il-kaz fejn A is-soggett attiv, qieghed iwieghed, joffri jew jaghti lil B xi vantagg mhux xieraq biex B jinfluwenza kif jiddeciedi C., sija jekk dak il-vantagg mhux xieraq ikun ghal C jew ghal xi hadd iehor, prezumibbilment D." Is-subartikolu (2) invece johloq ir-reat ta' min jircevi jew jaccetta xi offerta jew wegħda ta' xi vantagg mhux xieraq għalih innifsu jew għal xi hadd iehor bil-ghan li jezercita xi influwenza mhux xierqa bhal ma hemm imsemmija fissubartikolu (1).

Mela hawn is-suggett attiv huwa A li qed jaccetta jew jircevi minnghan B xi vantagg mhux xieraq għalih innifsu jew għall xi hadd iehor, bil-ghan li jezercita influwenza mhux xierqa fuq C. (sottolinear tal-Qorti). Is-subartikolu (3) mbagħad jiddisponi li r-reati msemija fis-subartikoli (1) u (2) ikunu saru għal kolloxx sew jekk il-kapacita' allegata li ssir influwenza mhux xierqa kienet jew ma kienetx tezisti, sew jekk l-influwenza tkun jew ma tkunx saret u sew jekk l-influwenza pretiza twassal jew ma twassalx għar-rizultat intiz. Illi għalhekk jidher car li biex jissussisti r-reat imsemmi flart. 121A (2) ikun hemm bzonn li s-soggett attiv A ikun accetta jew irceva l-vantagg mhux xieraq, bil-ghan li jezercita influwenza fuq kif jiddeciedi C , ossia terza persuna, u mhux semplicement ikun accetta vantagg biex jinfluwenza lilu nnifsu.

Dan ifisser allura li kien mehtieg li fis-suggett attiv tar-reat kontemplat fis-subinciz (2) (f'dan il-kaz l-appellat) ikun hemm ukoll il-kapacita li dik il-persuna tagħmel xi influwenza mhux xierqa fuq il-mod kif tiddeciedi persuna ohra (u cioe' il-membri tal-Bord ta' l-Aggudikazzjoni)."

L-art.121B tal-Kodici Kriminali

*"**121B.** Kull min, bil-ħsieb li jagħmel, jahbi jew juri haġa b'ohra dwar xi reat, johloq jew juża xi fattura jew xi dokument jew record ta' kontabilità iehor li jkun fih informazzjoni falza jew mhux kompleta jew jommetti b'mod mhux legittimu milli jirregistra xi ħlas, jeħel, meta jinsab hati, il-piena ta' prigunerija minn tliet xhur sa tmintax-il xahar mingħajr preġudizzju għal kull piena ohra li jista' jeħel taħt xi dispożizzjoni ohra ta dan il-Kodici jew ta' kull ligi ohra."*

L-esponent jemmen li fuq bazi *prima facie*, u iktar, Robert Vella kien krucjali bhala awtur sabiex inholoq dokument li fih informazzjoni falza jew mhux kompleta bil-ghan li l-privat gie moghti art pubblika bi prezzijiet irrizorji kif jidher mill-informazzjoni moghtija hawn fuq fl-ewwel parti tar-rikors mahluf.

L-artiklu 121D tal-Kodici Kriminali

“121D. Meta reat taht dan it-titolu gie mwettaq minn persuna li dak iż-żmien tal-imsemmi reat tkun id-direttur, il-manager, is-segretarju jew xi uffiċjal prinċipali ieħor ta’ korp magħqud jew tkun persuna li jkollha s-setgħat ta’ rappreżentanza ta’ dak il-korp jew li jkollha l-awtorità li tieħu deċiżjonijiet f’isem dak il-korp jew ikollha awtorità li teżercita kontroll fi ħdan dak il-korp u r-reat

imsemmi li dwaru tkun instabet ħatja dik il-persuna, jkun kollu jew f’parti minnu, sar għall-benefiċċju ta’ dak il-korp magħqud, dik il-persuna għandha għall-għanijiet ta’ dan it-titolu titqies bħala li tkun vestita bir-rappreżentanza legali tal-istess korp magħqud li jista’ jehel il-ħlas ta’ multa ta’ mhux inqas minn għoxrin elf euro (€20,000) u mhux aktar minn żewġ miljun euro (€2,000,000)”

Maghdud mal-artiklu 13 tal-Interpretation Act:

“13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence”

L-esponent jemmen li fuq bazi *prima facie* certament, Robert Vella għandu t-tregija u t-tmexxija u r-rappreżentanza tal-Lands Authority u li permezz tal-istess huwa seta’ jikkommetti d-delitti hawn deskritti u indikati f’dan ir-rikors. Altru li Robert Vella bhala CEO kellu l-awtorita jieh u deċiżjonijiet f’isem il-Lands Authority u l-awtoita li jeżercita kontroll assolut fil-Lands Authority.

Artiklu 124 tal-Kodici Kriminali

B'riferenza għall-**artiklu 124** tal-Kodici Kriminali:

“Kull uffic

jal jew impjegat pubbliku illi, bid-dieher jew bil-moħbi jew bil- mezz ta' persuna oħra, jiehu interess privat f'ag

g

udikazzjoni, appalt, jew amministrazzjoni, sewwa jekk ikollu għal kollox jew f'parti t-trig

ija jew is- sorveljanza tagħhom, kif ukoll jekk kellu din it-trig

ija jew sorveljanza fiz

- z

mien li l-ag

g

udikazzjoni, l-appalt, jew l-amministrazzjoni nbdew, jehel, meta jinsab hati, il-piena ta' prig

unerija minn xahar sa sitt xhur, u l- interdizzjoni perpetwa tal-kariga jew impieg tiegħu pubbliku”

Dwar dan ir-reat taht l-**artiklu 124** tal-Kodici Kriminali, il-Prof. Mamo jghid⁹ :

*“But in order that such private interest may be set up against the public officer or servant, it is essential that **he should have, wholly or in part, the direction or supervision of the adjudication, contract or administration in which the private interest is taken or that he should have had such direction or supervision at the time the adjudication or administration was commenced.** It is because of this function of direction or supervision that the act becomes immoral and constitutes a breach of trust and an abuse. **It is immaterial whether the public officer or servant was himself solely or jointly with others responsible for such direction or supervision.**”*

Wahda mill-ftit sentenzi tal-Qrati tagħna li dahlet *funditus* fir-rekwiziti tar-reat taht l-artiklu 124 tal-Kodici Kriminali kienet: il-**Pulizija vs Philip Azzopardi et**, deciza mill-Qorti tal- Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali per Mag. Edwina Grima fit-**28 ta' Ottubru 2009** (kawza Numru 504/2008):

“Illi l-imputati huma akkuzati bir-reat ikkontemplat fl-artikolu 124 tal-Kapitolu 9 tal-Ligijiet ta’ Malta, li jiddisponi testwalment:

“Kull ufficjal jew impjegat pubbliku illi bid-deher jew bil-mohbi jew bil-mezz ta’ persuna ohra, jiehu interess privat f’aggudikazzjoni, appalt, jew amministrazzjoni, sewwa jekk ikollu ghal kollox jew f’parti t-trigija jew is-sorveljanza taghhom, kif ukoll jekk kellu din it-trigija jew sorveljanza fiz-zmien li l-aggudikazzjoni, l-appalt jew l- amministrazzjoni nbdew, jehel meta jisab hati il- piena ta’ prigunerija minn xahar sa sitt xhur u l- interdizzjoni perpetwa tal-kariga jew impieg tieghu pubbliku.”

Illi l-intenzjoni tal-legislatur, meta fassal dina id-disposizzjoni tal-ligi kien wiehed u cioe’ illi ikun hemm sanzjonijiet penali ghal impjegat pubbliku li jabbuza mill- kariga li jikkupa u dana ghall-interess privat tieghu.

Illi qabel xejn ghandu jinghad illi dina id-disposizzjoni tal-ligi flimkien ma’ l-artikoli l-ohra li jaqghu taht l-istess titolu gew trasportati kwazi kelma b’kelma fil-ligi taghna milli Kodici Franciz u cioe’ il- “Code Napoleon” ta’ l-1810 u minn ‘l hekk imsejjah Codice Penali Per il Regno delle Due Sicilie ta’ l-1819.

Jidher illi din id-disposizzjoni tal-ligi baqghet prattikament l-istess u ma inbiddlet kwazi xejn mat-trapass taz-zmien.

Fil-fatt jekk wiehed jaqra dina id-disposizzjoni tal-ligi fil-Kodici Kriminali originali taghna, l-artikolu 115 kien jaqra hekk: “ogni ufficiale od impiegato pubblico, che, o apertamente o con atti simulati o con interposizione di persona, prendesse un interesse privato nelle aggiudicazioni, appalti o nelle amministrazioni, sia che egli ne avesse in tutto o in parte la direzione o la vigilanza, sia che l’avesse avuta nel tempo in cui tali aggiudicazioni, appalti od amministrazioni fossero cominciate, sara’ punito colla prigionia da uno a sei mesi, e colla interdizione perpetua del suo officio od impiego pubblico.”

*Illi fil-kummenti maghmula mil-gurista Santo **Roberti** ghal Codice Penale delle Due Sicilie, huwa jispjega bl-aktar mod car x’kienet l-intenzjoni tal- legislatur meta giet ippromulgata dina d-disposizzjoni tal-ligi:*

“La situazione speciale dei pubblici impiegati di qualunque grado o qualita esige che’essi tante volte si astengano dal far cio’ che forse sarebbe permesso ad altre persone.”

Ikompli ighid illi l-ufficjal pubbliku li ikun qed jikkupa il-kariga tieghu minhabba il-fiducja moghtija lillu mil-Gvern u ghalhekk anke mis-socjeta, irid izomm ruhu ‘il boghod minn kwalsiasi tip ta’ azzjoni li tista’ twassal ghal xi suspett jew biza li huwa ikun ikkometta xi tip ta’ frodi bi hsara ghall-istess socjeta.

Sahanistra fid-Dritt Ruman insibu illi r-Rumani tant kienu severi illi kien ipprojbit ghal ufficjal pubbliku illi jiehu sehem fi kwalunkwe tip ta’ negozju, f’xi spekulazzjoni jew li jippartecipa fil-kummerc.

Illi l-Giuseppi Falzon fin-noti tieghu ‘**Annotazioni alle Leggi Criminali per l-Isola di Malta e sue Dipendenze**’ (1872) jispjega b’mod dettaljat x’inhuma l-elementi kostituttivi ta’ dana ir-reat meta ighid:-

“Gli elementi di questo reato sorgono chiaramente dai termini coi quali sono concepiti i detti articoli. Per questo reato egli e’ necessario che si dichiari dal giuri’:

- 1. che l’accusato sia ufficiale od impiegato pubblico;*
- 2. che abbia preso un interesse privato nelle aggiudicazioni, negli appalti o nelle amministrazioni, od in un affare in cui egli fosse incaricato di dare ordini, di fare liquidazioni, di disporre o di fare alcun pagamento;*
- 3. che lo ufficiale od impiegato abbia od abbia avuto la direzione o la vigilanza, nel tempo in cui le aggiudicazioni, gli appalti o le amministrazioni fossero cominciate e;*
- 4. che gli atti commessi avuto luogo fraudolentemente.*

1. L-ufficjal pubbliku.

Illi il-persuna akkuzata fil-kummissjoni ta’ dana ir-reat, necessarjament irid ikun ufficjal jew impjegat pubbliku. Jekk hu nieqes dana l-element, allura ma hemmx dana ir-reat – reat li jikkonsisti fl-abbuz tal-funzjonijiet pubblici.

Il-Luigi **Maino** fil-kummenti tieghu ghal din id-disposizzjoni tal-ligi (li fil-Codice Zanardelli tal-1889 u sussegwentement fil-Codice Rocco ta’l-1930 kienet simili ghall-artikolu 124 tal-ligi taghna) fil-fatt ighid illi dina id-disposizzjoni tal-ligi *“prevede e punisce i pubblici ufficiali colpevoli di quei traffici indecorosi dove il loro interesse privato viene in conflitto con l’interesse pubblico. ... A costituire il delitto in esame e’ necessario che l’agente sia pubblico ufficiale ed eserciti il proprio ufficio presso la pubblica amministrazione interessata nell’atto nel quale egli prenda un interesse privato, qualunque sia l’entita’ di questo.”*¹⁰ Il-Manzini fil-kummenti tieghu ghal Codice Rocco ta’l-1930 ighid: *“Soggetto attivo del delitto puo’ essere esclusivamente il pubblico ufficiale. ...”*

2. L-interest privat

Illi l-ligi taghna tispecifika illi l-ufficjal pubbliku irid ikun ha xi interess privat kemm bid-dieher, kif ukoll bil-mohbi, jew permezz ta’ persuna ohra f’aggudikazzjoni, appalt jew amministrazzjoni.

Illi minn imkien fil-ligi taghna ma insibu definizzjoni ta’ x’jikkostitwixxi dana l-interest privat.

Il-**Falzon** ighid: *“Codesta ingerenza d’interesse privato, per dar luogo al reato, e’ indifferente in quale modo abbia avuto luogo. E’ vietato il prendere questo interesse sia apertamente sia per atti simulati, sia per interposizione di persona. Sotto la denominazione di atti simulati non s’intendono i soli atti*

scritti; la parola atti in questo articolo significa tutto cio' che si e' fatto, detto o convenuto."

Illi l-**Manzini** jiddeskrivi dana l-element ta' l-interess privat bhala *"l-elemento materiale del delitto"* Huwa isostni : *"prende interesse privato nei detti atti il pubblico ufficiale, che in relazione ad essi compie un fatto d'ingerenza qualsiasi per un illecito fine privato qualunque, a vantaggio proprio o altrui. Prendere interesse privato non equivale a ricavare utilita' privata, ma semplicemente ad interessarsi dell'atto o nell'atto, nel momento della sua proposizione, deliberazione, ratificazione, modificazione, revoca, annullamento, esecuzione, ecc, in vista d'una illecita finalita' privata qualunque."* Ikompli *"Non e' necessaria la sussistenza di un nesso particolare fra l'atto della pubblica amministrazione e l'ingerenza illecita. Ne' occorre che il fine privato, che il pubblico ufficiale consegue o cerca di raggiungere, sia assolutamente in conflitto con l'interesse pubblico; basta soltanto che sia incompatibile funzionalmente;"*

Ghalhekk sabiex ir-reat ikun wiehed ikkunsmat *"basta che il pubblico ufficiale si interessi per un fine privato di un affare o in un affare del suo ufficio. ... Il delitto si consuma col primo atto di quell'interessamento, e non si richiede ne' la produzione di un danno economico per la pubblica amministrazione, ne il conseguimento d'un lucro o d'altro vantaggio da parte del colpevole o di altri; e' sufficiente il pericolo funzionale derivante dalla violazione del dovere d'ufficio."* Lanqas ghalhekk ma huwa importanti l-qliegħ ahhari li ikun ser jagħmel jew ikun għamel l-ufficjal pubbliku sabiex jisussisti dana ir-reat.

Il-Professur **Mamo** fin-noti tieghu ighid *"If the public officer or servant has taken a private interest the value or amount of such interest is immaterial for the subsistence of the crime."*

Dana ghaliex kif tajjeb jispjega il-**Manzini**: *"per l'imputabilita' dell'esaminato delitto e' necessario il dolo, cioe' la volonta libera e cosciente e l'intenzione di compiere il fatto d'interessamento privato in relazione a un atto della pubblica amministrazione presso la quale il pubblico ufficiale esercita il proprio ufficio. ... Il fine e il motivo particolare del colpevole sono indifferenti: siano essi di lucro, di ambizione, di amicizia, ecc' siano ignobili o no, riguardino la persona del colpevole o un terzo ecc."*

Dana ghaliex ir-reat jimmaterjalizza ruhu hekk kif l-ufficjal pubbliku jiehu dana l-interess privat f'xi att li jaqa' fil-manzjonijiet tieghu u dana għal kawllunkwe fini illecita.

Illi ghalhekk l-ufficjal pubbliku illi jippartecipa jew jiehu sehem f'negozji jew xi skambju iehor li huwa inkompattibbli mal-kariga minnu okkupata isir hati tal- kummissjoni ta' dana ir-reat. Dana minnu innifsu jimplika illi l- għan ahhari ta' l-ufficjal pubbliku huwa wiehed illecitu anke jekk dina l- azzjoni tieghu mhux necessarjament iggib xi forma ta' hsara materjali għall-amministrazzjoni pubblika. Kif ighid tajjeb il-**Carrara**: *" nello stesso abuso di ufficio che non si estrinseca in un'azione gia di per se criminosa, tutta la oggettivita giuridica del reato si incontra nella violazione dello speciale*

dovere che all'ufficiale imponeva l'ufficio, e così' in un rapporto esclusivamente personale fra l'impiegato e la società'."

3. L-interess privat f'aggudikazzjoni, appalt jew amministrazzjoni.

Illi l-ligi taghna kif imfassla fuq il-Codice delle Due Sicilie u il-Code Napoleon, tippreciza illi l-interess privat irid ikun sehħ f'xi att ta' aggudikazzjoni, appalt jew amministrazzjoni. Illi il-ligi penali Taljana kemm fil-Codice Zanardelli kif ukoll sussegwentement fil Codice Rocco ma baqghetx tispecifica l-att li fih l-ufficjal pubbliku ikun ha dana l-interess privat fejn id-dispost tal-ligi gie jaqra:

‘Il pubblico ufficiale, che, direttamente o per interposta persona, o con atti simulati, prende un interesse privato in qualsiasi atto della pubblica amministrazione presso la quale esercita il proprio ufficio, e’ punito con la

*reclusione ...’*¹¹ Il-ligi taghna madanakollu hija wahda aktar ristrettiva, izda ma tispecificax x'inhuma dawn l-atti ta' aggudikazzjoni, appalt jew amministrazzjoni. Illi l- gurisprudenza taljana interpretat dawna l-atti bis-segventi ezempji li forsi jistghu iwasslu sabiex wiehed jifhem fejn ried jasal il-legislatur meta giet promulgata dina id- disposizzjoni tal-ligi bosta snin ilu:

“Commette il reato qui preveduto l'usciera che per interposta persona concorre all'asta dei mobili pignorati procedendo alla vendita di parecchi di essi in conferma e per un prezzo molto inferiore alla stima, Cass.14 gennaio 1891.

“L'esattore che per interposta persona licita od avviene aggiudicatore di beni da lui fatti porre all'asta, per imposte non soddisfatte ... Cass.10.

*“Neanche I semplici consiglieri comunali possono prendere un interesse privato qualunque nelle aggiudicazioni e negli appalti, o in altro atto qualunque della pubblica amministrazione – Cass. 12 febbraio 1890.”*¹²

Ukoll il-Falzon jispjega fin-noti tieghu: “ *Consiste il terzo elemento del reato nella circostanza di fatto che l'ufficiale abbia preso un interesse private in un'aggiudicazione, in un appalto od in una amministrazione della direzione di che egli fosse stato incaricato e su cui avesse dovuto esercitare vigilanza; ed in questa funzione di vigilanza e di direzione il*

reato attinge la sua immoralità ed il tradimento ed abuso di confidenza.”

4. L-animus fraudolenti

11 Illi ghandu jinghad illi dina id-disposizzjoni tal-ligi giet mhassra mill-Kodici Taljan permezz ta' Legge 26 aprile 1990 n.86. Illum ghalhekk dina id-dispoiszzjoni tal-ligi ma ghadhiex tezisti fil-kodici penali Taljan.

12 Zerboglio – Trattato di diritto penale Vol.III Dei delitti contro la pubblica amministrazione e l'amministrazione della Giustizia.

Illi fl-ahharnett huwa necessarju sabiex jissussisti dana ir-reat illi l-intenzjoni ta' l-ufficjal pubbliku ikun wiehed frawdolenti. Il-Falzon ighid: *“Quantunque quest'ultimo elemento non sia indicato nel testo della legge in termini espresso, pure e' certo che mancando questa intenzione criminosa, senza la quale un reato di commissione non potrebbe esistere, codesta legge non e' applicabile. Egli e' chiaro che dal fatto istesso proibito si presume l'animo fraudolente; ma questa e' una presunzione, la quale deve cedere alla verita, e l'ufficiale puo' benissimo provare la propria buona fede e la purezza della sua intenzione.”* Dina l-ahhar element kostitutiv ta' dana ir-reat hija intrinsikament marbuta mat-tieni element u cioe' ma' l-element ta' l-interess privat kif definit iktar 'il fuq – interess privat li irid ikollu fini illecita. “

Sija l-artiklu 124 u 125 tal-Kodici Kriminali huma ibbazati, essenzjalment fuq l-artiklu 176 tal-Codice Penale delle Due Sicilie, li dwaru il Luigi **Maino** (Dei delitti contro la pubblica amministrazione) jghid hekk, b'zieda ma' dak hawn fuq ikkwotat:

“L'art 176 prevede e punisce i pubblici ufficiali colpevoli di quei traffici indecorosi dove il loro interesse privato viene in conflitto con l'interesse pubblico e nei quali e' prevedibile che essi trascinati dalla bramosia di illeciti lucri, sacrificino l'istituto le cui condizioni economiche avrebbero il dovere di avvantaggiare.¹³....E' tutta una questione di fatto, da risolversi dal giudice, secondo le circostanze dei singoli casi.....

Il delitto e' perfetto fin dal primo momento in cui il pubblico ufficiale ha preso un interesse privato negli atti della pubblica amministrazione. Non si richiede eziandio che la pubblica amministrazione abbia effettivamente risentito un danno....La Commissione della Camera dei Deputati sul progetto Zanardelli del 1887 osservo' intorno al reato in esame che l'ingerenza del pubblico ufficiale e' sempre perniciosa alle pubbliche amministrazioni e sempre indecorosa pel pubblico ufficiale, anche quando lo stimolo del privato interesse non l'avesse spinto a recar danni determinati e valutabili all'amministrazione cui l'affare appartiene....Il danno effettivo non e' essenziale al reato in questione.”

Fis-sentenza tal-Qorti tal-Appell Kriminali tat-13 ta' Novembru 2013 fl-ismijiet ta' Pulizija vs Philip Azzopardi et (per Imhalled Michael Malli):

“Illi l-awtur sopra citat **Vincenzo Manzini**, kif anke ikkwotat mill-Qorti fis-sentenza appellata jghid li *“Prendere interesse privato non equivale a ricavare utilita' privata, ma semplicemente ad interessarsi dell 'atto o nell 'alto”*.

Illi din il-konsiderazzjoni ta' l-esponent hija in sintonija wkoll mat-test tal-mibki Professur Anthony Mamo ikkwotat mill-Qorti fis-sentenza appellata fejn jinghad illi:-

13 *Vide*, Relazione Ministeriale sul programma 1887, n.XCII (dak li wassal ghal Codice Zanardelli)

“If the public officer or servant has taken a private interest the value or amount of such interest is immaterial for the subsistence of the crime.”

.....

*Ta’ min jagħmel riferenza għas-segwenti bran mill- kapolavur ta’ **Vincenzo Manzini** f’dan ir-rigward fejn si tratta mill-element ta’ interess privat:*

“Ne occorre che il fine privato, che il pubblico ufficiale consegue o cerca di raggiungere, sia assolutamente in conflitto con l’interesse pubblico; basta soltanto che sia incompatibile funzionalmente: anche l’illegittima, quantunque non dannosa, cointeressenza del pubblico ufficiale con la pubblica amministrazione concreta il delitto inezame. (enfasi ta’ l-awtur)

Anzi, questo si presenta pur quando l’interessamento a fine privato del pubblico ufficiale possa riguardarsi, sotto l’aspetto economico o finanziario, come vantaggioso anche per la cosa pubblica.. (enfasi ta’ l-esponent).”

Mill-premess jirrizulta cjar li l-interess pubbliku ma jikkoincidix necessarament ma’ l-interess tal-Gvern jew ma’ l-vantagg ekonomiku jew finanzjarju lill-Gvern.”

L-artiklu 125 tal-Kap.9:-

“Kull uffic

jal jew impjegat pubbliku illi jieħu interess privat f’affari li dwarha jkun inkarigat jagħti ordnijiet, jagħmel likwidazzjonijiet, arrang

amenti jew hlasijiet ta’ kull xorta li jkunu, jehel, meta jinsab hati, il- pieni msemmin jin fl-ahħar artikolu qabel dan”

Ir-rikorrenti jemmen umilment li fuq bazi *prima facie* jezisti s-suspett ragjonevoli ibbazat ragjonevolment fuq fatti u cirkostanzi li ma jistghux ikunu michuda li

A skans ta’ ripetizzjoni, dak li ingħad fir-rigward tal-artiklu 124 tal-Kap.9, japplika għall-artiklu 125 ukoll.

Dawn iz-zewg artikoli japplikaw jekk ufficjal pubbliku ikun qed jaqdi l-interessi privati ta’ persuna ohra għas-skapitu tal-interess pubbliku.

U ma hemmx il-htiega li tigi provata n-natura tar-relazzjoni ta bejniethom

L-esponent jemmen li bil-fatti empirici esposti hawn fuq fl-ewwel parti ta' dan ir-rikors, hemm bazi *prima facie* li Robert Vella, ufficjal pubbliku, ikkommetta (u hemm provi li jehtieg ikunu ippreservati b'mod urgenti f'dan ir-rigward) id-delitti taht l-artikli 124, 125 tal-Kap.9. Tant kemm Vella mar barra minn triqtu biex il-privat jiffranka ghexieren ta' miljuni kbar ta' euro a skapitu tal-erarju pubbliku, u allura tal-interess nazzjonali, li huwa impossibbli li jigi eskluż li huwa ha interess privat f'affari li dwarha huwa kien inkarigat bhala CEO tal-Lands Authority.

L-artiklu 126 tal-Kodici Kriminali:

“126. Kemm-il darba, fil-kazijiet imsemmija fl-aħħar żewġ artikoli qabel dan, tkun ukoll saret ħsara b'qerq lill-amministrazzjoni illi magħha l-affari jkollha x'taqsam, il-piena tkun ta' prigunerija minn tmintax-il xahar sa tliet snin, bl-interdizzjoni stabbilita f'dawk l-artikoli”

L-esponent jemmen li fuq bazi *prima facie*, l-agir tal-persuna denunzjata, li huwa ufficjal pubbliku, sar b'qerq lill-amministrazzjoni pubblika. Fl-artikli hawn fuq esposti, frott investigazzjonijiet minn gurnalizmu indipendenti u li qatt ma gew michuda, hemm litanija disgustanti ta' agir fraudolenti u qarrieqi ghad-dannu tal-erarju pubbliku u allura tal-amministrazzjoni pubblika.

Il-persuna denunzjata hija l-ufficjali pubblici per eccellenza fil-Lands Authority li ghandu u kellu kontroll tal-affari, ta direzzjonijiet dwarha, kellu oversight il-hin kollu tagħha, kellu l-ilgiem tal-erarju pubbliku f'idejh il-hin kollu.

Izda minflok hares l-interessi tal-amministrazzjoni pubblika, huwa minflok ha hsieb l-interessi tal-privat.

Jekk kienx hemm ukoll tixhim, hija xi haga li trid taccerta l-Inkjesta Magisterjali billi jkun Magistrat Inkwirenti biss li jkollu s-setgha li jahtar esperti u ghandu l-poter li jeleva devices ecc li jkun jistghu jitfghu dawl fuq tali hela disgustanti ta' fondi pubblici.

Ma ninsewx li l-ikbar u l-uniku rizorsa li ghandu l-Gvern Malti (apparti r-rizora umana ovvjament) hija l-art pubblika.

Malta huwa l-uniku pajjbiz fl-Unjoni Ewropea fejn il-Gvern huwa proprjetarju ta' bejn wiehed u iehor 90% tat-territorju nazzjonali, frott diversi sekli ta' hakma minn potenzi barranin (biex wiehed jara kemm dan il-percentwali hu kbir, fi Franza l-Istat ghandu 5% biss tat-territorju nazzjonali).

Meta min hu afdat bit-tmexxija tal-amministrazzjoni tal-ikbar rizorsa naturali li ghandna, minflok jamministraha bil-qies u bl-gherf, jintilef f'daghdigha ta' negozju multi miljunarju li f'kull wahda minnhom l-Istat mar minn taht bil-goff u l-privat gawda bil-kbir, allura l-esponent jemmen, u dan iktar u iktar ghax mhux qed nitkelmu fuq darba jew darbtejn biss, li hawn si tratta ta' agir kriminuz sistematiku. U l-bon sens jiddetta li ebda CEO tal-Lands Authority m'hu ser jarmi barra kull regola ta' *bonus pater familias* fl-amministrazzjoni tal-art pubblika, esponi ruhu ghall-kritika aspra, jipperikola il-pozizzjoni tieghu, jittanta jwettaq agir kriminuz fuq medda ta' xhur u snin b'mod kontinwu u sistematiku, biex b'dan kollu jibbenefika 'l privat minghajr ma hu jkun gie ivvantaggjat b'xi mod personali u privat. Pero dan jista' jigi u ghandu jigi accertat biss minn Inkjesta Magisterjali.

L-artiklu 127 tal-Kodici Kriminali (embezzlement)

127. (1) Kull ufficjal jew impjegat pubbliku illi, ghal xi vantaġġ privat tiegħu jew għall-benefiċċju ta' xi persuna jew entità oħra, jagħmel użu hażin minn flejjes tal-Gvern jew tal-privat, karti ta' kreditu jew dokumenti, titoli, atti jew hwejjeġ mobbli, illi jkunu ġew fdati lilu minhabba l-kariga jew impieg tiegħu, jew jisraqhom, jeħel, meta jinsab ħati, il-piena ta' priġunerija minn sentejn sa sitt snin, u l-interdizzjoni ġenerali perpetwa"

Fis-sentenza tal-Qorti tal-Magistrati (Malta) fl-ismijiet **Il-Pulizija vs Carmel Saliba**¹⁴:

"Illi fir-rigward tar-reat ikkontemplat fl-Artikolu 127, il-Qorti ser tapplika l-istess argumentazzjoni.

14 Qorti ta' Gudikatura Kriminali (Ghawdex), Onor. Magistrat Dr Edwina Grima; 31.05.2012

Hawnhekk id-dolo mehtieg ukoll isarraġ fil-fatt illi l-ufficjal pubbliku japproprja ruhu jew jisraq flus jew oggetti ohra mobbli sabiex jagħmel profitt u dana b'abbuż tal-fiducia lil mogħtija fil-kariga li jikkupa.

Kif jgħid il-Professur Mamo: "Strictly speaking the more appropriate word to denote this element of the crime under reference is the first i.e. "misapply" in as much as the public officer already has the detention or general possession of the thing: he only betrays the trust reposed in him by diverting it from its destination, by using it unlawfully or his private advantage; in brief by deriving therefrom an unlawful gain."

Huwa jikkwota dak li jgħid l- Imhallef Harding: "Embezzlement is a crimen interversionis – that is it is completed when the lawful "causa possidendi" is fraudulently substituted by the unlawful "causa dominii". As soon as the sum or thing is misapplied, there is fraudulent conversion."

Kif ritenut fis-sentenza fis-sentenza **Il-Pulizija vs. Alexander Zammit et¹⁵**:

"Wiehed mill-elementi tar-reat ta' storn [Art. 127 - Kodici Kriminali] huwa li l-oggetti in kwistjoni jkunu ġew fdati lill-individwu minhabba il-kariga jew impiegtieghu."

Fis-sentenza tal-Qorti tal-Magistrati per Mag Dr J Demicoli tal-11 ta' Settembru 2017 fl-ismijiet **Il-Pulizija vs Jason Masini**, jingħad hekk fuq dan id-delitt:

"Illi jibqa' biex jigi kkunsidrat jekk giex pruvat ir-reat hekk imsejjah 'peculato' jew embezzlement.

L-element essenzjali għal dan ir-reat hu li l-awtur irid ikun uffiċjal jew impjegat pubbliku.

*Issir riferenza għal kaz **Il-Pulizija vs Carmel Saliba** deciz nhar il-31 ta' Mejju, 2012,20, fejn il-Qorti rriteniet:*

"Illi fir-rigward tar-reat ikkontemplat fl-artikolu 127, il-Qorti ser tapplika l-istess argumentazzjoni.

Hawnhekk id-dolo mehtieg ukoll isarraġ fil-fatt illi l-ufficjal pubbliku japproprja ruhu jew jisraq flus jew oggetti ohra mobbli sabiex jagħmel profitt u dana b'abbuż tal-fiducia lil mogħtija fil-kariga li jikkupa. Kif ighid il-Professur Mamo: "Strictly speaking the more appropriate word to denote this element of the crime under reference is the first i.e. "misapply" inasmuch as the public officer already has the detention or general possession of the thing: he only betrays the trust reposed in him by diverting it from its destination, by using it unlawfully or his private advantage; in brief by deriving therefrom an unlawful gain."
Huwa jikkwota dak li ighid l-Imhallef Harding: "Embezzlement is a crimen interversionis – that is it is completed when the lawful "causa possidendi" is fraudu-

lently substituted by the unlawlul 'causa dominii'. As soon as the sum or thing is misapplied, there is fraudulent conversion."

Kif ritenut fis-sentenza **Il-Pulizija vs. Alexander Zammit et.**:²¹ "Wiehed mill-elementi tar-reat ta' storn [Art. 127 - Kodici Kriminali] huwa li l-oggetti in kwistjoni jkunu gew fdati lill-individwu minhabba il-kariga jew impieg tieghu. Kjarament, jew ikun hemm dan l-affidament ta' l-oggetti, jew inkella jkun hemm ittehid taghhom "invito domino" li hu element tas-serq. Wiehed minn dawn l-elementi ovvjament jeskludi lill-iehor relativament ghall-istess fatt."

Fis-sentenza **Il-Maesta tar-Re vs Guzeppi Fenech et**, il-Qorti Kriminali

"Illi gie deciz min din l-Qorti, kompsota minn tlett Imhallfin, fil-kawza "Rex vs Brincat" deciza fis-6 ta' April, 1943, illi d-delitt ta' storn kontemplat fl-artikolu 125 tal-Kap.12.....huwa specjali ghall-ufficjal jew impjegat publiku; u persuna li ma jkollhiex dik il-kwalita' anke jekk tghin lill-ufficjal publiku, ma tistax tigi akkuzata ta' komplicita' taht dik id-disposizzjoni, ghaliex ikun qieghed jonqos element essenzjali ghal dik id-disposizzjoni, u cjoe il-kwalita' ta' ufficjal jew impejgat publiku li jkollu taht idejh il-haga stornata in forza ta' dak l-ufficju tieghu.....

Illi fil-kaz "**Rex vs Victor Fava**" deciz ukoll minn din l-qorti kollegjalment komposta fis-6 ta' Lulju 1943, gie mantenut l-istess principju. U gie spjegat li f'kaz ta' reati simil, il-kwalita' ta' ufficjal pubbliku (u kwindi l-fatt li l-haga tkun fdata lilu minhabb lkarika tieghu) ma ghandhiex bhala bazi l-facilitazzjoni ta' l-ezekuzzjoni tar-reat, imma l-vjolazzjoni ta' dover specjali inkombenti lill-ufficjal pubbliku (li jkollu l-haga fdata lilu) u ghalhekk bhala cirkustanza eskklusivament personali ma hijiex komunikabli. Illi l-principju ta' non-kommunikabilita', minhabba li si tratta mhux ta' kwistjoni ta' facilitazzjoni, imma ta' vjolazzjoni ta' dover specjali, propunjat f'dawn is-sentenzi huwa accettat mill-Pessina..... Masucci (Dig. It. voce "Partecipazine", n.155).

Dan l-awtur tal-ahhar precizament jghid illi d-delitt f'kaz simili, jidderiva "dalla violazione di uno special dovere incombente ad una determinate persona; neppureneppure puo essere estesa agli altri condeliquenti perche' non sarebbe giusto che risentisce i danni della violazione di un dovere speciale anche chi a questo dovere non era sottoposto". U ghandu jigi nutat li persuna tigi sottoposta ghal dak id-dover mhux biss ghax tkun ufficjal publiku imma ghax il-haga tkun giet fdata lilha minhabba lkarika; u ghalhekk mhux bizzejjed li tkun ufficjal publiku biss, minghajr ma jkun hemm l-affidament tal-haga. Ikompli jghid gustament il-Masucci illi "se l'aggravante forse anche a lui comunicabile, si avrebbe questa inammissibile conseguenza che si risponderebbe come complice di un'aggravante nella quale non si sarebbe potuto concorrere, se il colpevole, invece di limitarsi alla parte di complice, avesse scelto quella di esecutore del reato". U precizamnet dan huwa l-aqwa argument. Infatti diversament, kieku ma tigix segwita din it-teorija, jista jkun hemm dan l-assurd;

Il-kwalita' ta' ufficjal pubbliku serviet ta' facilitazzjoni ghar-reat, imma b'dan kollu ma tistax tikkomunika ruhha lill-komplici, ghaliex ic-cirkustanza ta' ufficjal publiku, akkopjata ghall-affidament tal-haga stornata minhabba l-

kariga, hija mhux aggravanti, imma element tar-reat specjali; u l-komplici, li, ankorke` hu ufficjal publiku, ma kellux pero` l-haga fdata lilu, ma setax jikkometti dak it-titolu ta' reat ghalkemm seta' ikkometta titolu ta' reat iehor. Fl-ewwel kaz hemm it-titolu ta' serq (reat komuni) pju` l-aggravanti, komunikabbli ghax serviet ta' aggravanti; fit-tieni kaz hemm titolu specjali ta' reat, biss dik ic-cirkustanza (ufficjal publiku pju l-affidament tal-haga minhabba l-karika) ma hijiex aggravanti, imma element kostituttiv tar-reat stess, u dak li fih ma tirrikorrix dik ic-cirkustanza ma jistax jikkometti, mhux l-aggravanti, imma ma jistax jikkometti t-titolu stess ta' dak ir-reat specjali. ...

Illi minn ezami tal-att tal-kawza...jirrizulta li f'dan il-kaz il-haga allegata stornata kienet taht idejn akkuzat wiehed biss, in forza tal-ufficju tieghu, cjoe` ta' Guzeppi Fenech. Iz-zewg ko-akkuzati l-ohra huma, jew kienu, ukoll impjegati pubblici, sija pure fl-istess dipartiment, imma l-haga stornata ma kienitx fdata lilhom in forza tal-impjeg taghhom....”

Ghall-esponenti, l-insenjament tal-Qrati u awturi fuq id-delitt ta' storn jinkwadraw ruhhom perfettament ghall-fatti minnu esposti u li l-fatti mikxufa mill-gurnalizmu indipendenti juru *text-book case* ta' *embezzlement* imwettaq minn Robert Vella meta ghal diversi drabi iddispona minn titolu ta' proprjeta (ownership) ta' art pubblika ghal farka zghira biss minn dak li fil-fatt tiswa' fis-suq odjern.

Il-fatti esposti haw fuq juru li fuq bazi prima facie certamente Robert Vella bhala ufficjal jew impjegat publiku ghal xi vantaġġ privat tieghu jew għall-benefiċċju ta' xi persuna jew entità ohra, għamel użu hażin minn flejjes tal-Gvern jew dokumenti, titoli, atti jew hwejjeġ mobbli, illi jkunu ġew fdati lil minhabba l-kariga jew impjeg tieghu.

U li allura juri li hemm bazi hafna iktar minn *prima facie* li tiskatta Inkjesta Magisterjali li hija biss tkun tista' tippreserva l-provi, inkluz (izda mhux biss) id-devices elettronici, emails, ecc tal-persona denunzjata.

L-artiklu 293, 294 tal-Kodici Kriminali (maghdud mal-art.141 tal-Kap.9)

“293. Kull min japproprja ruħu, billi jdawwar bi profitt għalihjew għal persuna ohra, minn haġa ta' haddiehor li tkun ġiet fdatajew ikkunsinnata lilu taht titolu illi jġib mieghu l-obbligu tar-raddtal-haġa jew li jsir użu minnha speċifikat, jehel, meta jinsab hati, il-piena ta' prigunerija minn tliet xhur sa tmintax-il xahar

294. Madankollu, meta d-delitt imsemmi fl-aħħar artikolu qabel dan jiġi magħmul fuq haġa fdata jew ikkunsinnata lill-hati minhabba l-professjoni, l-industrja, l-kummerċ, l-amministrazzjoni, kariga jew servizz tieghu, jew minhabba depożitu neċessarju, l-azzjoni kriminali titmexxa ex officio, u l-piena tkun ta' prigunerija minn seba' xhur sa sentejn”

Ir-rikorrent jemmen umilment li jezisti s-suspett ragjonevoli ibbazat ragjonevolment fuq fatti u cirkostanzi li ma jistghux ikunu michuda kif murija fl-artikli u fatti esposti fl-ewwel parti ta' dan ir-rikors li Robert Vella, bhala ufficjali pubblici per eccellenza, kellu f'idejh fdati (minhabba l-kariga tieghu) flejjes pubblici (ghax il-proprjeta immobbli tiswa' miljuni kbar ta' euro) intizi biex isir uzu ghaqli u mhux biex jinhlew u jitberbqu halli jgawdi minnhom b'mod indebitu il-privat kontra l-interess pubbliku.

Ovvjament mal-art.294 irid jigi abbinat l-ddebitu tal-141 tal-Kodici Kriminali.

Fis-sentenza **Il-Pulizija vs Patrick Spiteri (per Magistrat Dr V Axiaq tal-10.11.2020):**

“Sabiex jigi pprovat ir-reat ta' approprjazzjoni indebita aggravata ikkontemplata fl-Artikoli 293 u 294 tal-Kap. 9 tal-Ligijiet ta' Malta jehtieg li l-Prosekuzzjoni tipprova li:

1. L-imputat ircieva flus jew xi haġa oħra mobbli mingħand xi hadd. Ilpussess tal-haġa jrid ikun gie trasferit lill-imputat voluntarjament millproprjetarju jew detentur tal-haġa. It-trasferiment tal-pussess ma jridx wkoll ikun jimporta t-trasferiment tad-dominju cioe tal-proprjeta' ghaliex f'dan il-kaz ma jiffugurax l-element tal-azzjoni indebita.

2. Minhabba l-professjoni ossia' kariga jew servizz tieghu,

3. Taht titolu illi jgib mieghu l-obbligu tar-radd tal-haġa jew li jsir uzu minnha speċifikat,

4. L-imputat għamel tieghu l-haġa cioe` approprja ruhu minnha, jew bieħha, jew iddistruggiha jew altrimenti għamel uzu divers minnha a proprio commodo o vantaggio;

5. L-imputat kellu l-intenzjoni li japproprja ruhu mill-haġa meta huwa kien jaf li kienet ta' haddieħor.”

Fis-sentenza fl-ismijiet **Il-Pulizija v. John Gauci (14/02/1997, Imħallef Victor J. Caruana Colombo)** il-Qorti tal-Appell Kriminali (Inferjuri) qalet:

“Minn ezami ta' l-artikolu 293 tal-Kodici Kriminali jidher car li wiehed mill-elementi essenzjali ta'l-appropriazzjoni indebita huwa kostitwit mill-frazi: "... taht titolu illi jgib mieghu l-obbligu ... li jsir uzu minnha speċifikat ...". Speċifikat minn min? Ovvjament minn min ikun ikkonsenja l-haġa lill-agent u minn hadd izjed. Hija l-persuna li tikkonsenja l-haġa u hadd hliefha li jkollha jedd timponi l-obbligu ossia tispesifika lillagent dwar kif ikollu jagħmel uzu mill-oggett ikkonsenjat lil minnha. Jekk il-konsenjatur jagħti flus lill-agent biex dan bihom jixtrilu dar, l-agent jikkommetti r-reat ta' approprjazzjoni indebita jekk minflok jagħtihom karita'. Jekk il-konsejatur jagħti flus lill-agent biex dan jixtrihom armi

bi skop ta' serq, l-agent ikun approprja ruhu mill-flus indebitament jekk jaghtihom karita', apparti l-kwistjoni tal-moralita'. Jekk jixtrihom armi, allura l-agent ikun ghamel uzu mill-flus kif specifikat. F'kull kaz, flindagini dwar il-htija jew le ta' approprjazzjoni indebita, ghandha ssir prova ta' l-uzu tal-haga specifikata mill-konsenjatur u prova ta' jekk l-agent ikunx ghamel mill-haga dak l-uzu jew uzu divers."

L-awtur Taljan **Francesco Antolisei** jghid fir-rigward ta' dan ir-reat illi:

"A nostro modo di vedere — conformemente all'opinione che prevale nella nostra dottrina ed a affermata anche nella Relazione del Ministro al Progetto — il delitto di appropriazione indebita costituisce una violazione del diritto di proprieta. La vera essenza del reato, infatti, consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio"

L-artiklu 135 tal-Kodici Kriminali

"135. Kull depożitarju tal-awtorità pubblika illi, b'mezzi kontra l-liġi miftehmin ma' persuni oħra, ma jhallix li l-liġi tiġi esegwita, jeħel, meta jinsab hati, il-piena ta' prigunerija minn tmintax-il xahar sa tliet snin"

L-esponent jemmen li fuq bazi *prima facie* l-fatti hawn fuq esposti u ikkonfermati bil-gurament tieghu juru li Robert Vella, bhala depozitarju tal-awtorita pubblika, b'mezzi kontra l-ligi u bi ftehim ma' persuni ohra ma halliex il-ligi tigi esegwita, tal-anqas zgur il-ligi tal-Hasil tal-Flus (S.L.373.01) Public Procurement (S.L.601.03) u tal-Public Finance Management Act (Kap.601).

L-artiklu 308, 309, 310 tal-Kap.9

L-artiklu 308 tal-Kodici Kriminali:

*“Kull min, b'mezzi kontra l-lig
i, jew billi jagħmel uz
u ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi jinqeda b'qerq ieħor, ingann,
jew billi juri ħag
a b'oħra sabiex ig
iegħel titwemmen l-ez
istenza ta' intrapriz
i foloz, jew ta' ħila, setgħa fuq ħaddieħor, jew ta' krediti immag
inarji, jew sabiex iqanqal tama jew biz
a' dwar xi g
rajja kimerika, jagħmel qligħ bi ħsara ta' ħaddieħor, jeħel, meta jinsab ħati, il-
piena ta' prig
unerija minn sena sa seba' snin.”*

L-artiklu 309 tal-Kodici Kriminali:

*“Kull min, bi ħsara ta' ħaddieħor, jagħmel xi qligħ ieħor b'qerq, mhux imsemmi
fl-artikoli ta' qabel ta' dan is-sub-titolu, jeħel, meta jinsab ħati, il- piena tkun ta'
prig
unerij minn xahrejn sa sentejn jew il-multa.”*

Ir-rikorrenti jemmnu umilment li jezisti s-suspett ragjonevoli ibbazat ragjonevolment fuq fatti u cirkostanzi li ma jistghux ikunu michuda li l-Ministru Konrad Mizzi ikkommetta l- ksur jew kien komplici fil-ksur ta' l-art.308 u 309 ghax b'mezzi kontra l-ligi (inkluz il- probabli tixhim,

assocjazzjoni kriminali, kongura kriminali, u ksur tas-sigriet professjonali, fost ohrajn) ghamel qligh, jew kien komplici biex terzi ghamlu qligh, bi hsara ingenti tal- poplu Malti u tal-erarju pubbliku.

Dan l-ghemil tal-Ministru Mizzi ma setax kien semplicement traskuragni jew inkompetenza grassa fil-gestjoni ta' fondi u assi pubblici izda jaghti lok ghal suspett serju ta' reati ta' frodi, korruzzjoni u riciklagg ta' flus.

L-artiklu 310(1)(a) tal-Kodici Kriminali:

“(1) Fil-kaz

ijiet imsemmija f’dan is-sub-titolu -

(c) meta l-ammont tal-ħsara magħmula mill-ħati huwa aktar minn ħamest elef euro (€5,000), il-piena tkun ta’ prig

unerija minn sentejn sa disa’ snin”

Illi l-elementi ta’ l-**Artikolu 308** tal-Kap.9 g

ew esposti dettaljatament fis-sentenza fl-ismijiet **Il-Pulizija vs Antoine Gambin (9.1.23)** per Magistrat Dr L Caruana li eccita b’approvazzjoni s-sentenza fl-ismijiet **Il-Pulizija vs Charles Zarb**¹⁶, fejn g

ie ritenut illi:

“Skont g

urisprudenza kostanti li din il-qorti kif ippreseduta taqbel magħha, l-ingredjenti ta' l-elementi materjali ta' dan id-delitt ta' truffa huma dawn li g

ejjin;

Fl-ewwel lok bħala sug

g

ett attiv ta’ dan id-delitt jista’ ikun kulhadd.

Fit-tieni lok il-Leg

islatur, aktar mill-interess soc

jali tal-fiduc

ja rec

¹⁶ **Il-Pulizija vs Charles Zarb**, Qorti tal-Appell Kriminali, 22 ta’ Frar 1993

iproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uz

u ta' l-ingann u tar-rag

g

iri li jinduc

u bniedem jiddisponi minn g

id li fil-kors normali tan-negozju ma kienx jagħmel;

Fit-tielet lok hemm l-element materjali tat-truffa u jikkometti d-delitt tat- truffa kull min:

a. b'mezzi kontra l-lig

i, jew

b. billi jagħmel uz

u minn ismijiet foloz jew c. ta' kwalifiki foloz jew

d. billi jinqeda b'qerq ieħor u

e. ingann jew

f. billi juri ħag

a b'oħra sabiex ig

ieghel titwemmen l-ez

istenza ta' intrapriz

i foloz,

g

. jew ta' hila;

h. setgħa fuq haddiehor jew

i. ta' krediti immag

inarji jew

j. sabiex iqanqal tama jew biz

a' dwar xi g

rajja kimerika, jagħmel

qliegħ bi ħsara ta' haddiehor.”

Illi f'din l-istess sentenza, il-Qorti kompliet billi tirreferi għas-sentenza mogħtija mill-Qorti Kriminali fis-27 ta' Mejju 1957 fl-ismijiet Rex vs Vittorio Azzopardi (Vol. XXIX.IV p.398) fejn fiha hemm spjegat li “hu nec

essarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpresjonaw bniedem ta' prudenza u sagac

ja ordinarja, li jridu jkunu frawdolenti u li hu nec

essaru li jkun impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-lig

i. ”

Tkompli tgħid l-istess sentenza:

“Dwar l-artifizzji hemm diversi sentenzi tal-Qorti tagħna u ta din il-Qorti specjalment. Hekk, l-Imħallef W. Harding tas-27 ta' Mejju 1944 in re Il- Pulizija vs Nikol Bonnici qal “il-Qorti t'isfel fis-sentenza tagħha waslet għall-konkluzjoni illi hemm bz

onn biex ikun reat taht l-artikolu 309 (illum 308) illi dak il-kliem ikun akkumpanjat minn apparat estern li jsaħħaħ il- kelma stess fil-menti ta' l-iffrodat. Din it-tez

i hija dik ac

c

ettata fil- g

urisprudenza ta' din il-Qorti anke kolleg

g

jalment komposta fil-kawz

a “Reg vs Francesco Cachia e Charles Bech fit-2 ta' Jannar, 1896 li fiha intqal illi “quel articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede.

Il-mibki Imħallef G

użè Flores fil-kawz

a Il-Pulizija versus Carmelo Cassar Parnis dec

iz

a minn din il-Qorti fil-31 ta' Ottubru 1959 segwa l- istess interpretazzjoni u esprima ruħu kif g

ej: “Għar-reat ta' truffa kkontemplat fl-artikolu 322 (illum 308) tal-Kodic

i Kriminali kif jidher mid- dic

itura partikolari deskrittiva adoperata, hemm bz

onn li tirriz

ulta materjalità spec

ifika li sservi ta' substrat għall-verosimiljanza tal-falsità prospettata bħala vera u b'hekk bħala mezz ta' qerq. M'huwiex biz

z

ejjed għal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, mingħajr l-uz

u ta' apparat estern li jirrivesti bi kredibilità l- affermazzjonijiet menzjonjieri tal-frodatur. Il-lig

i tagħti protezzjoni spec

jali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwaz

i teatrali, li tissupera il-kawtela ordinarja kontra s-semplific

i u luz

ingi, u li tagħti daww l-esterjorità ta' verità kif tirrendi l-idea l-espressjoni felic

i fid-dritt Franciz mise-en-scene...

....Kwantu jirrigwarda l-element formali, c

joè' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jingħad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann il-konsenja tal-flus jew og

g

ett li jkun bi profitt ing

ust tiegħu. L-ing

ustizzja tal-profitt tohroġ mill-artikolu 308 tal- Kodici

i Kriminali fejn il-kliem "bi ħsara ta' ħaddiehor" ma jhallux dubbju dwar dan. Jig

ifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bz

onn li s-sug

g

ett attiv tar-reat fil-mument tal- konsumazzjoni tiegħu ikun konxju ta' l-ing

ustizzja tal-profitt u b'dan il- mod il-leg

ittima produttività tal-profitt hija biz

z

ejjed biex teskludi d-dolo;"

*Illi din il-Qorti tagħmel referenza wkoll għas-sentenza **Pulizija vs George Manicolo**¹⁷ fejn g*

ie ritenut illi:

"Illi il-g

urisprudenza nostrali dejjem kienet illi sabiex jissussisti r-reat ta' truffa, mhix biz

z

ejjed is-semplic

i gidba, il-kliem menzonier, iz

da hu nec

essarju u essenzjali li jkun hemm ukoll l-apparat estern li jagħti fidi u kredibilità lil dik il-gidba. Dan l-att estern jista; jieħu diversi forom, kultant anke atti teatrali. Irid ikun att, jew atti, li jimpressjonaw bniedem ta' intellig

enza u prudenza ordinarja u normali, għandhom ikunu atti frawdolenti li nec

essarjament iqajmu sentimenti kif hemm indikati fil-fuq kwotat artikolu 308 tal-Kap. 9. Irid ikun hemm il-messa in xena u għalhekk, kif intqal, il-gideb waħedhom mhumix suffic

jenti. Iridu jkun atti, il-gideb waħedhom mhumix suffic

jenti."

Illi fil-każ in ez

ami, kif diġà spjegat, l-EACEA hallset is-somma msemija abbaż

i tad-dikjarazzjonijiet foloz magħmulha fir-rapport finali sottomess lilha. Ma tressqet ebda prova quddiem din il-Qorti li l-akkuz

at irrinforza d- dikjarazzjonijiet msemija b'xi apparat estern, bħal per ez

empju fatturi jew dikjarazzjonijiet foloz li setgħu g

ew sottomessi lil EACEA. F'dan ir-rigward, l- akkuz

at għandu rag

un jargumenta illi ma seħħet ebda g

rajja kimerika jew intuz

aw rag

g

iri jew artifizji li l-EACEA qajmula sentimenti kif indikati fl-Artikolu 308 tal-Kap. 9.

Dan, però, ma jfissirx li l-akkuz

at ma għamilx qliegħ b'qerq.

Ikkonsidrat;

Illi t-tieni akkuz

a mig

juba kontrih hija pernjata fuq l-Artikolu 309 tal-Kap. 9 tal- Lig

ijiet ta' Malta, li, meta sehhew r-reati de quo, kien jaqra testwalment hekk:-

“309. Kull min, bi hsara ta' haddiehor, jagħmel xi qligh ieħor b'qerq, mhux imsemmi fl-artikoli ta' qabel ta' dan is-Sub-titolu, jeħel, meta jinsab ħati, il-piena tkun ta' prig

unerija minn xahar sa sitt xhur.”

**Illi għar-rigward ta' dan ir-reat, il-Qorti ser tagħmel referenza għal dak li g
ie ritenut fis-sentenza **il-Pulizija vs Marvin Pavia**¹⁸.**

“Illi l-artikolu 309 tal-Kapitolu 9, imbagħad jikkontempla ir-reat minuri tal-frodi innominat. Illi għar-rigward ta' dana ir-reat, għalkemm l-element tar-“rag

g

iri” jew l-“artifzji”, huwa nieqes u allura anke gidba simplic

i hija biz

z

ejjed għal kummissjoni ta' dana ir-reat, iz

da dana irid bil-fors iwassal sabiex il-vittma u c

ioe' is-sug

g

ett passiv ta' dana ir-reat isofri xi telf patrimonjali.”

Illi l-elementi ta' dan ir-reat, fis-semplic

ità tagħhom jeħtieġ

u li s-sug

g

ett attiv igawdi qlieġh patrimonjali għad-dannu tas-sug

g

ett passiv, liema qlieġh ikun riz

ultat dirett ta' qerq adoperat mis-sug

g

ett attiv u li ma jkunx jaqa' taħt xi weħed mill-artikoli inkluz

i fis-sub-titolu.”

18 **il-Pulizija vs Marvin Pavia**, Qorti tal-Magistrati, 23 ta' Għunju 2010.

Mis-sentenza magistrali tal-Qorti tal-Appell Kriminali in re Pulizija vs Giuseppe Vella (23.7.2019):-

“Fis-sentenza fl-ismijiet 'Il-Pulizija [Spettur Maurice Curmi] vs Anthony Fountain u Stephen k/a Steve Abela”¹⁹ gie kkunsidrat:

‘Illi d-differenza bejn r-reati ipotizzati f’l-artikoli 308 u 309 tal-Kodici Kriminali, kif ukoll lelementi rikjesti biex jissussistu dawn ir-reati, hija ben stabbilita fil- gurijsprudenza taghna. Fil-Ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat millagent xi forma ta’ ingann jew qerq, liema ingann jew qerq ikun wassal lill- vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent ... jekk l-ingann jew qerq ikun jikkonsisti f’raggiri jew artifizi - dak li fid-dottrina jissejjah ukoll mis en scene - ikun hemm it-truffa; jekk le ikun hemm hemm ir-reat minuri ta’ frodi innominata (jew lukru frawdolenti innominat)²⁰.

Illi x’jikostitwixxi r-raggiri u l-artifizji ukoll huwa ben stabbilit fil-gurijsprudenza taghna.

Fi kliem Antolisei²¹

“artifizio e’ ogni studiata trasfigurazione del vero, ogni camuffamento della realta effetuato sia simulando cio che non esiste, sia dissimulando ... cioe che esiste. Il raggiro d’altra parte e un avvolgimento ingenuoso di parole, destinate a convincere: piu precisamente una menzogna corredata da ragionamenti idonei a farla scambiare per verita. E certo che l’espressione del codice di per se’ richiama l’ idea di una certa astuzia o di un sottile accorgimento nel porre l’inganno in opera.”

Antolisei jkompli jghid pero li

nell’applicazione pratica della legge questa idea e’ andata sempre piu affievolendosi, fin quasi a scomparire del tutto. Per tal modo si e’ finito con l’ammettere che anche la semplice menzogna puo bastare per dare vita alla truffa²².

Illi f’dan is-sens anke l-Qorti ta’ l-Appell Kriminali qalet hekk dwar il-messa in xena:

“Il-Ligi taghna ma tirrikjediex li l-messa in xena, cioe daww l-artifizji jew raggiri, ikunu xi haga kkumplikata jew arkittetta b’hafna pjanijiet”.²³

Fis-sentenza fl-ismijiet 'Il-Pulizija (Spettur Chris Pullicino) vs Joseph Incorvaja²⁴ gie kkunsidrat li:

19 Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fil-15 ta' Dicembru, 2011 (Numru: 688/2009)

20 Pulizija ve Carmela German AK deciza 30.12.2004 u l-gurijsprudenza hemm kwotata.

21 Manuale Di Diritto Penale (Giuffre) pagna 356.

22 Op cit pagna 357

23 Ref Pulizija vs Emanuel Ellul deciza 20.06.1997

'Fir-raba' akkuza l-imputat gie akkuzat bir-reat ta' frodi, kif kontemplat fl-artikolu 308.

Din il-Qorti, ghal kull bon fini, taghmel referenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-kawza fl-ismijiet Il-Pulizija v Mark Schembri fejn hemm dettaljatament deskritt l-origini ta' dan r-reat fis-sistema nostrana, kif ukoll dettalji estensivi dwar lelementi rikjesti mil-ligi taghna ghal biex jigi ntegrat r-reat ta' truffa.

Id-disposizzjonijiet tal-Kodici taghna, kienu gew mehuda minn Sir Adrian Dingli mill-paragrafu 5 tal-artikolu 430 tal-Codice delle due Sicilie li hu identiku, hlief ghal xi kelmiet insinifikanti, ghal Kodici Franciz (artikolu 405), avolja dan, il-Codice delle due Sicilie, ittruffa kien jsejhlha frodi - del resto anke llum dan d-delitt fil-Kodici taghna, hu indikativ bhala 'frodi b'ghemil qarrieqi'.

Skond il-gurisprudenza kostanti li din il-Qorti kif presjeduta taqbel maghha, l-ingredjenti tal-element materjali ta' dan id-delitt ta' truffa huma dawn li gejjin:

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' jkun kulhadd inkluz l-imputat.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal- fiducja reciproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu talingann u tar-raggiri li jinducu bniedem jiddisponi minn gid fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa, w jikkommetti d-delitt ta' truffa kull min - a. b'mezzi kontra l-ligi, jew b. billi jaghmel uzu ta' ismijiet foloz, jew c. ta' kwalifiki foloz, d. billi jinqeda b'qerq iehor, u e. ingann, jew f. billi juri haga b'ohra sabiex igieghel titwemmen l-esiztenza ta' intraprizi foloz, g. jew ta' hila h. setgha fuq haddiehor, jew i. ta' krediti mmaginarji, jew j. sabiex iqanqal tama jew biza' dwar xi grajja kimerika, jaghmel qliegh bi hsara ta' haddiehor.

*Fis-sentenza tas-sebgha w ghoxrin ta' Mejju, 1895 moghtija mill-Qorti Kriminali fil-kawza fl-ismijiet **Rex v Vittorio Azzopardi** (vol.XXIX - IV -pg. 398) dik il-Qorti ccitat estensivament minn Chaveau et Helie u anke minn sentenzi tal-Corte di Cassazione ta' Parigi biex tispjega li hu necessarju, biex ikun hemm r-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpresjonaw bniedem ta' prudenza w sagacja ordinarja, li jridu jkunu frawdolenti w li hu necessarju li jkunu impjegati biex jipperswadu bl- assistenza ta' fatti li jqajjmu sentimenti kif hemm indikat fil- ligi.*

*F'dik is-sentenza ssemmiet wkoll is-sentenza **Regina v Giuseppe Galea tat-tnax ta' Mejju, 1887** fejn gie stabbilit li :-*

"che per costituire la frode sotto la disposizione di quel articolo 282 (illum 308) non e' necessario la concorrenza di ambedue i mezzi menzionati nell'atto di accusa essendo sufficiente l'impiego di inganno o di simulazione per persuadere l'esistenza din un credito immaginario anche senza un artificio contrario ai regolamenti"

Dwar l-artifizji hemm diversi sentenzi tal-Qrati taghna.

*L- Imhallef William Harding filkawza fl-ismijiet **Il-Pulizija v Nikola Bonnici** deciza fis-sebgha w ghoxrin ta' Mejju, 1944 jghid:-*

"il-Qorti t'isfel fis-sentenza taghha...waslet ghal konkluzzjoni li hemm bzonn biex ikun reat taht l-artikolu 309 (illum 308) illi dak il-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-merti tal- iffrodat."

*Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kollegjalment komposta fil-kawza **Regina v Francesco Cachia u Charles Beck** deciza fit- tnejn ta' Jannar, 1896 li fiha intqal li*

'quel articolo non richiede solamente una asserzione menzoniera e falsa ma richiede inoltre che siano stato impegnate inganno, raggire o simulazione ed e necessario quindi che la falsa assertiva sia accompagnata da qualche atto diretto a darla fede."

*L-Imhallef Guze Flores fil-kawza fl-ismijiet **Il-Pulizija v Carmelo Cassar Parnis** deciza minn din il-Qorti fil- wiehed u tletin ta' Ottubru, 1959, segwa l-istess interpretazzjoni u esprima ruhu hekk:*

"Ghar-reati ta' truffa kontemplat fl-artikolu 322 (illum 308) tal-Kodici Kriminali kif jidher mid-dicitura partikolari deskrittiva adoperata hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghal verosimiljanza tal-falsita' prospettata bhala vera u b'hekk bhala mezz ta' qerq. Ma huwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-afferazzjonijiet menzonjeri tal-frodatatur".

Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi teatrali li tissupera l- kawtela ordinarja kontra s-sempli u luzingi, u li taghti lil daww lesterjorita' kif tirrendi l-idea l-espressjoni felici fid- dritt Franciz mis en scene.

*L-istess interpretazzjoni l- Imhallef Flores irrepetiha fis-sentenza tieghu fil-kawza fl- ismijiet **Police v Schreiner tat-tlieta ta' Mejju, 1956** u fil- kawza fl-ismijiet **Il-Pulizija v Gerald Parretti** deciza fis- sebgha ta' April, 1950.*

Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan r-reat ta' truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatatur li jipprokura b'ingann il-konsenja tal-flus jew oggett li jkun fi profitt ingust tieghu.

L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa hemm bzonn li s-sugett attiv tar-reat fil-mument tal- konsumazzjoni tieghu ikun konxju talingustizzja tal-profitt u b'dan il-mod il-legittima produttiva tal-profitt hija bizzejjed biex teskludi d-dolo.

*Ghal dak li hi definizzjoni jew tifsira x'inhuma akkuzi jew raggiri (mise en scene), id-definizzjoni moghtija mill- **Antolisei** fil-ktieb tieghu Manuale di diritto penale (vol 1 - pg. 280) hija bizzejjed :*

"nel suo significato letterale artificio e' ogni studiato trasfigurazione del vero, ogni cammufamento della realta' affettuate sia simulando cio' che non esiste (per ezempio, ricchezze, titoli, nome, qualita' ecc.) sia dissimulando vale a dire, nascondendo cio' che esiste (per ezempio il proprio stato di insolvenza.)"

Kif jispjega l-gurista Taljan Francesco Antolisei, b'"artificio" wiehed ghandu jifhem

"....ogni studiata trasfigurazione del vero, ogni camuffamento della realta' effettuato sia simulando cioe' che non esiste (per es., ricchezza, titoli, nome, qualita' ecc.), sia dissimulando, vale a dire, nascondendo cio' che esiste (per es., il proprio stato di insolvenza, di persona coniugata, o inabilitata, l'uso di una determinata cosa, ecc.)" [Manuale di Diritto Penale - Parte Speciale I, Giuffre' (Milano), 1986, p. 295].

L-istess awtur jiddefinixxi ir-raggir bil-mod segwenti:

" Il raggirio....e' un avvolgimento ingegnoso di parole destinate a convincere: piu' precisamente una menzogna corredata da ragionamenti idonei a farla scambiare per verita' "[ibid.].

Il-ligi taghna ma tirrikjedix li l-messa in xena, cioe' li dawn l-artifizji jew raggiri, ikunu xi haga kumplikata jew arkitettata b'hafna pjanijiet; in fatti l-ligi stess tindika il-forom li dawn l-artifizji jew raggiri jistghu jiehd.

Fost dawn hemm issitwazzjoni ta' meta persuna b'kwalsiasi forma ta' qerq, ingann jew simulazzjoni taghti x'tifhem li ghandha flus meta m'ghandhiex. Meta wiehed johrog cekk meta jkun jaf, jew messu ragjonevolment kien jaf, li ma hemmx fondi fil-kont in kwistjoni sabiex dak ic-cekk jista' jigi onorat, ikun qed jinganna, jew jipprova jinganna, b'wahda mill-forom kontemplati fil-ligi taghna.

Pero', kif inghad, element essenzjali iehor tar-reat in dizamina huwa t-telf patrimonjali li ggarra il-vittima bil-konsegwenti qligh ghall-agent, liema telf u qligh ikunu r-risultat ta' xi haga li taghmel jew tonqos milli taghmel il-vittima ghax tkun giet ingannata. In fatti t-truffa komunement tigi imqabbla mas-serq u malappropjazzjoni indebita, bid-differenza bejn it-tlett reati konsistenti fil-mod ta' kif isir it-telf u l-korrispondenti qligh.

Fi kliem l-awtur appena citat:

"Il consenso della vittima, carpito fraudolentemente, caratterizza il reato [di truffa] e lo distingue sia dal furto che dall'appropriazione indebita. Ambedue questi reati, infatti, presuppongono il dissenso della vittima, perche' il primo esige l'impossessamento della cosa in contrasto col volere di colui che la detiene, mentre il secondo postula da parte del possessore un' arbitraria, e percio' non consentita, assunzione di poteri che sono riservati al proprietario. Nella truffa, invece, l'agente, mediante artifici o raggiri, riesce ad ottenere che la vittima si danneggi da se': consegna una cosa, assuma un'obbligazione, rinunci ad un diritto, ecc.: compia insomma un atto di disposizione pregiudizievole per il suo patrimonio e vantaggioso per altri" [op. cit., p. 293]."

Fis-sentenza fl-ismijiet 'Il-Pulizija versus George Manicolo'²⁵, gie kkunsidrat li:

“Illi l-ġurisprudenza nostrali dejjem kienet illi sabiex jissussisti r-reat ta' truffa mhux biżżejjed is-sempliċi gidba, il-kliem menzjonier, izda hu neċessarju u essenzjali li jkun hemm ukoll l-apparat estern li jagħti fidi u kredibilita' lil dik il-gidba. Dan l-att estern jista' jiehu diversi forom, kultant anke att teatrali. Irid ikun att, jew atti, li jimpressjonaw bniedem ta' intelligenza u prudenza ordinarja u normali, għandhom ikunu atti frawdolenti li neċessarjament iqajmu sentimenti kif indikat fl-artikolu 308 tal-Kap. 9. Irrid ikun hemm ilmessa in xena u għalhekk, kif intqal, il-gideb waħedhom mhumieq suffiċjenti. Iridu jkun atti, inkluż kliem hekk u perswassiv, li jwasslu lil xi hadd jemmin l-eżistenza ta' xi haġa msemmija mil-frodatur, liema haġa, in realta', ma teżistix. Minbarra l-gideb għalhekk, irid ikun hemm l-ingann, ir-raġġiri jew is-simulazzjoni li jwasslu sabiex il-vittma jemmin jew ikollu fidi f'dak li qed jiġi lillu mwieġhed mill-frodatur.

Dan l-ingann, għalhekk, għandu jkun akkumpanjat b'artifizji kwazi teatrali, u mhux sempliċement wegħdiet, promessi u kliem sempliċi. Dan hu element ferm importanti fir-reat ta' frodi. Biex ikun hemm dawn l-artifizji, mhux biżżejjed il-kliem waħdu, iżda dan il-kliem għandu jkun elokwenti, studjat u perswassiv; ma' dan it-tip ta' kliem għandu jkun hemm xi haġa esterna li apparentement tikkonferma u tipprova l-fatti assenti, ċjoe' apparat estern li jirrivesti bi kredibilita' laffermazzjoni menzjoniera tal-frodatur;

Din il-messa in xena hi magħmula minn dawn l-artifizji jew raġġiri idonei li jinduċu u filfatt ikunu induċew lill-vittma fi żball li bħala riżultat ta' dan l-iżball, il-vittma tagħmel jew tonqos li tagħmel xi haġa li ggħibilha telf patrimonjali bil-korrispondent qligħ għall-aġent frodatur; Kif ġie stabbilit u riaffermat fil-Qrati tagħna, ikun hati ta' truffa minn jagħmel użu minn kwalita' falza sabiex jagħmel qligħ għad-dannu ta' haddieħor;”

Fid-dawn tal-insenjament tal-Qrati tagħna fuq id-delitt fl-artikoli 308, 309, 310 (u l-artikolu 310 huwa applikabbli għax il-hsara lill-erarju pubbliku hija ferm u ferm u ferm iktar minn €5,000 (għax tqarreb l-għexieren tal-miljuni ta' euro) u fid-dawl tal-fatti fuq esibiti fl-ewwel parti tar-rikors, l-esponent jemmin li fuq bazi prima facie hemm il-lok ta' *in genere* dwar Robert Vella u d-delitt ta' truffa.

L-artiklu 188 tal-Kodici Kriminali:

“(1) Kull min, sabiex jikseb xi vantag

għ jew benefiċ

c

ju għalih innifsu jew għal haddiehor, f'xi dokument maħsub għal xi awtorità pubblika, xjentement jagħmel dikjarazzjoni jew stqarrija falza, jew jagħti tagħrif falz, jeħel, meta jinsab hati, il-piena ta' prig

unerija għal z

mien ta' mhux iz

jed minn sentejn jew multa:

Iz

da ebda ħag

a f'dan l-artikolu ma tolqot l-applikabbiltà ta' xi lig

i oħra li tipprovdi għal piena oghla.

(2) Meta d-dokument imsemmi fis-subartikolu (1) ma jkun wiehed intiz għal xi awtorità pubblika, il-piena għandha tkun dik ta' prig

unerija li ma tkunx iz

jed minn sena jew multa”

Dan l-artiklu/delitt qed jigi senjalat sija b'riferenza għall-probabli komplicita ta' Robert Vella fid-dikjarazzjonijiet foloz li saru u jinsabu esposti fl-artiklu ta' TheShiftNews tat-3 ta' Marzu 2024 (hawn fuq rappurtat)

Il-Qorti tal-Appell Kriminali in re **Il-Pulizija v. Paul Galea** fis-17 ta' Ottubru 1997 qalet hekk dwar il-falz ideologiku:

“Id-differenza bejn il-falz materjali u l-falz ideolog

iku hi spjegata mill- awturi b'dan il-mod: filwaqt li fil-kaz tal-falz materjali d-dokument jig

i ffalsifikat fl-essenza tiegħu, fil-falz ideolog

iku d-dokument ikun ffalsifikat biss fis-sustanza u cjoe` fil-kontenut ideali tiegħu (ara Antolisei, F. Manuale di Diritto Penale – V.VI, n. 2296 – 829). Ikun hemm falsità materjali meta d- dokument ikun wiehed mhux g

enwin (jig

ifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-formazzjoni definittiva tiegħu), mentri fil- falz ideolog

iku, għalkemm id-dokument ikun g

enwin ‘non e` veridico, perche` colui che lo ha formato gli fa dire cose contrarie al vero’.

Għall-finijiet tad- dottrina in tema ta' falsita' jkun hemm dokument kull fejn hemm kitba, attribwibbli għal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' fatti jew dikjarazzjoni ta' volonta' (Antolisei, F. op, cit., p. 594). S'intendi, b'kitba wieħed ma jifhimx biss is-sinjali alfabetici

i iż

da tinkludi dawk numeric

i, stenografici

i u anke kriptografici

i, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn c

ertu numru ta' nies. Il-kitba f'dan is-sens tista' ssir kemm bl-id kif ukoll b'mezzi mekkanici

i, b'mezz indelibbli jew li jista' jithassar u fuq kwalsiasi mezz li jista' jiehu imqar temporanejament il-messag

g – karta, parc

mina, injam, g

ebel, hadid, plastik, ecc.”

HASIL ta' FLUS

Hawn ser issir referenza għall-**Kap. 373 tal-Ligijiet ta' Malta (money laundering)**, speċjalment l-**artikli 2 u 3 tal-Kap.373, u għas-S.L. 373.01:**

Illi l-imgieba ta' **Robert Vella** kif spjegata hawn fuq tinkwadra ruħha fid-definizzjoni ta' money laundering, **sija bħala kompliċi u sija bħala parteċipi f'assoċjazzjoni kriminali (art. 48A tal-Kap.9) għall-istess skop.**

Fl-artiklu 2 tal-Kap.373, insibu din id-definizzjoni, stante li tali definizzjoni tkopri d-delitti/fatti imwettqa fuq bazi *prima facie* minn Robert Vella kif huwa spejgħat u elenkat f'dan ir-rikors:

“Money laundering” tfisser:

(i) *il-konversjoni jew trasferiment ta' proprjetà meta wieħed ikun jaf jew jissuspetta li dik il- proprjetà tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali, għall-iskop ta' jew skopijiet ta' habi jew wiri haġa b'oħra tal-oriġini tal-proprjetà jew ta' għoti ta' għajjnuna lil xi persuna jew persuni involuti jew konċernati f'attività kriminali;*

(ii) *il-habi jew wiri haġa b'oħra tal-veri xorta, provenjenza, lok, dispożizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjetà, meta wieħed ikun jaf jew jissuspetta li dik il-proprjetà tkun inkisbet direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;*

(iii) *l-akkwist, pussess jew użu ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;*

(iv) *ir-ritenzjoni mingħajr skuża raġonevoli ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;*

(v) *it-tentattiv ta' xi hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii) u (iv) ta' hawn fuq, u dan fit-tifsir tal-artikolu 41 tal-Kodiċi Kriminali;*

(vi) *l-aġir bħala komplici fit-tifsir tal-artikolu 42 tal-Kodiċi Kriminali rigward xi waħda mill-hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq"*

L-esponenti ser jissenjala l-insenjament fil-qosor ta' dak li l-Qrati tagħna qalu meta ġew biex jiġġudikaw kawżi kriminali fejn kien hemm akkuża ta' hasil ta' flus.

Dan ser jingħad b'riferenza għat-talba tal-esponenti biex il-Maġistrat Inkwirenti jiskatta Inkjesta Maġisterjali dwar is-suspett raġjonevoli li **Robert Vella** ikkometta d-delitt ta' tentattiv²⁶ ta' hasil ta' flus jew hasil ta' flus fil-forma konsumata, jew **kien komplici fl-istess**.

26 Id-delitt ta' tentattiv ta' hasil ta' flus igorr l-istess piena daqs dak ikkunsmat skond il-Kap.373

Fis-sentenza **Il-Pulizija vs Fabio Zulian** deciza mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fis-16.12.2014, konfermata fi stadju ta' appell in parte fejn jirrigwarda htija fuq komplicità f'hasil ta' flus, ġie stabbilit hekk:

“Illi ghandu jigi ben precizat illi dan l-Att gie emendat varji drabi. Senjalament ghalina, cioe' ghall-kaz in dezamina, huma relevanti dawk l-emendi li l-Artikolu suriferit ghadda minnhom fis-sena 2007 (ara Att XXXI.2007) fejn dan l- Artikolu 2 zdiedlu bhala element ta' xjenza mhux biss il-fatt illi persuna kienet “taf” li proprjeta' kienet derivanti minn rikavat ta' attivita' kriminali, imma anke li kellu s-“suspett” ta' hekk. Ghalhekk, ir-reat li ghalih irid jirrispondi Zulian huwa dak kif rifless fl-akkuza addebitata u cioe' li hu kien jaf bil-provenjenza ta' dan ir-rikavat, nieqes l-element ta' suspett.

Dwar il-mod kif il-Prosekuzzjoni ghandha tipprova r-reati sottostanti, (underlying offence), l-Artikolu 2(2)(a) kien jaqra hekk (qabel l-emendi):

“Persuna tista' tinstab hatja tad-delitt ta' money laundering taht dan l-Att, anke fin-nuqqas ta' sentenza tal-Qorti li tistablixxi htija fir-rigward tal-attivita' kriminali sottostanti, liema attivita' kriminali tista' tigi stabbilita minn prova cirkostanzjali jew prova ohra, minghajr il-htiega li l- Prosekuzzjoni tipprova li kien hemm sentenza ta' kundanna ghall-attivita' kriminali sottostanti.”

Car ghalhekk, u ma hemm l-ebda dubbju li l-Prosekuzzjoni hija ferm facilitata, (anke qabel l-emendi tas-sena 2010), bl- obbligu taghha li tipprova l-attivita' kriminuza sottostanti, anke allura minn provi cirkostanzjali.

Ovvjament din l-onu ta' prova tibqa' tinkombi fuq il- Prosekuzzjoni u jrid ikun hu li jwassal din il-prova tal-grad li trid il-Ligi.

*Ghalhekk insibu li fil-kawza fl-ismijiet “**Ir-Repubblika ta' Malta vs John Vella**”, deciza nhar id-9 ta' Novembru, 2007, il-Qorti qalet hekk dwar dan:*

“L-Avukat Generali jista' akkuza persuna bir-reat ta' money laundering minghajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita' kriminali sottostanti. Certament pero, ikun x'ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laundering, irid jindika n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' proprjeta' necessarjament jammonta ghal money laundering. Din hi Ligi straordinarja li tintroduci kuncett radikali fis- sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skurplu u attenzjoni, biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawk l-era moderna tad-drittijiet tal-bniedem.”

Mela bla dubbju din il-Qorti stabbiliet illi kien hemm dawg ir- reati sottostanti mill-gukaturi tal-Casino di Venezia; sabet htija fil-konfront ta' Zulian tal-assocjazzjoni per delinquere, l-assocjazzjoni - conspiracy, truffa u falsifikazzjoni.

.....

“Issa l-Ligi trid, biex jigi ppruvat ir-reat ta' reciklagg, illi dan Fabio Zulian kien jaf, fit-test Ingliz “knowing such property”, kienet derivanti direttament jew indirettament minn rikavat ta' attivita' kriminali. Mhux biss jehtieg illi dan ir-rikavat ikollu dik il-provenjenza, imma li conoscendo dan l-agent, jahbi din in-natura tieghu billi jikkonvertieh fi flus jew rikavat li jidher lecitu, jahbi l-provenjenza tieghu ta' dan ir-rikavat u jibdillu n-natura ta' llecita` billi jikkonvertieh ghal dak illi issa jkollu sembjanza lecita. Jinhtieg illi l-agent ikun jaf “knowing” illi dawn il-flejjes jew proprjeta`, ikollhom provenjenza ta' attivita' kriminali.”

Ghalhekk insibu fl-Archbold: Criminal Pleading, Evidence and Practice 2012, paga 2475, illi dan ir-reat hu hekk definit: “The explanatory notes to the PAA (Proceeds of Crime Act 2002) define money laundering as “the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises.”

Fis-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Ġudikatura Kriminali per Magistrat Dr Donatella Frendo Dimech nhar **1-14 ta' Gunju 2017** fl-ismijiet **Il-Pulizija vs Brian Buttigieg et**, insibu hekk:

“Illi dwar l-ewwel imputazzjoni addebitata lill-imputati issir riferenza għad-decizjoni fl-ismijiet The Police vs Omissis and Vladimir Omar Fernandez Delgado. F'din id-decizjoni l-Qorti għamlet analiżi funditus dwar ir-rekwiżiti legali tar-reat ta' riciklagg, jew kif inhu aħjar magħruf dak ta' money laundering previst bl-artikolu 3 tal-Kapitolu 373 tal-Liġijiet ta' Malta fejn l-attivita' tal-akkuzat trid tiffigura f'waħda jew iżjed miċ-ċirkostanzi deskritti fil-paragrafi (i) sa (vi) tal-artikolu 2 tal-istess Kapitolu:

“Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

“The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as “the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises.” (Archbold: Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows: “Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary.”

Adds: “There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering.” (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and every one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment “Police (Insp Angelo Gafa’) vs Carlos Frias Mateo”, dated 19th January, 2012, wherein the Court is here cited to have said this:

“Kif ben tajjeb qalet l-Ewwel Qorti diversi awturi jaqsmu l-proċess tal-ħasil ta’ flus fit-tliet stadji imsejha “placement”, “layering” u “integration”.

Dawn l-istadji ġew imfissra b’mod konċiż mill-Qorti tal-Maġistrati.

Pero` mill-bidunett ta’ min jippreciza, li dawn l-istadji huma biss deskrizzjoni ġenerali tal-proċess tal-ħasil tal-flus.

Hija skola ta’ taġħlim li nħolqot sabiex ġurija tkun f’pożizzjoni aktar felici sabiex tifhem l-intriċċi u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta’ reati. Għalhekk il-qasma tal-proċess tal-ħasil ta’ flus f’dawn it-tliet stadji hija waħda ġenerali u bl-ebda mod dogmatika.

Fil-fatt awturi oħrajn jikkritikaw din il-klassifikazzjoni minħabba li tissimplifika wisq is-sitwazzjoni u f’ħafna każijiet ma hiex riflessjoni veritjiera ta’ dak li realment ikun qed jiġri. Għalhekk dawn l-istadji għandhom jittieħdu biss bħala punto di partenza u bħala deskrizzjoni ġenerali tal-proċess tal-“mon-

ey laundering” b’mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f’kull wiehed u waħda minn dawn l-istadji. Dan qiegħed jingħad fid-dawl tad-definizzjoni ta’ “money laundering” li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz “Proceeds of Crime Act 2002” fejn analiżi tagħhom ma tirrikjedix li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti “placement”, “layering” u “integration” bil-proprjeta’.

Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case “Republic of Malta vs John Vella” decided on the 9th November, 2007: “L-Avukat Generali jista’ jakkuża persuna bir-reat ta’ money laundering mingħajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jiġi allegat li huwa l-attività kriminali sottostanti. Ċertament pero, ikun x’ikun il-każ, jekk l-Avukat Generali jiddeċiedi li jakkuża lil xi ħadd b’money laundering irid jindikana n-ness bejn l-attività kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverżjoni ta’ trasferiment ta’ proprjeta’, mhux kull haġġ jew wiri ta’ proprjeta’ neċessarjament jammonta għal money laundering.

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words “knowing” or “suspecting”. [(Section 2(1)(i))]. The element of knowledge should present no difficulties to prove in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental elements necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of “reasonable grounds for suspicion”, this within the limitations hereunder outlined:

“5.3 Mental elements

The mental elements which are relevant to offences under Part 7 of POCA are:

- *knowledge*
- *suspicion*

- reasonable grounds for suspicion

These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge

Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion

The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given.

In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the

crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."

(P.O.C.A Proceeds of Crime Act 2002 (U.K).

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

"A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity."

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved.

Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspicious clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not proof John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta.

Fil-fatt l-Artiklu 3(3) tal-Kapitolu 373, Ligijiet ta' Malta, li għa saret riferenza għalih jipprovdi:

(3) Fi proc

eduri dwar reat ta' money laundering taht dan l-Att id-disposizzjonijiet tal-artikolu 22(1C)

(b) tal-Ordinanza dwar il-Medic

ini Perikoluz

i., għandhom ikunu mutatis mutandis japplikaw.

Fl-artikolu 22(1C)(b) tal-Ordinanza msemmija nsibu:

(b) Fi proc

edimenti għal reat taht il-paragrafu (a), meta l-prosekuzzjoni g

g

ib prova li l-imputat jew akkuz

at ma jkun ta ebda spjegazzjoni rag

onevoli li turi li dawk il-flus, proprjeta jew rikavatma kenux flus, proprjeta jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza lec

ita ta' dawk il- flus, proprjeta jew rikavat tkun tinkombi fuq il-persuna imputata jew akkuz

ata.

Il-Qorti fil-każ citat kompliet:

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must prove the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19th January, 2012, wherein the Court said:

“F’din il-kawza, l-appellat qed jiġi akkużat bil-ksur ta’ provvedimenti tal-Kap 373 tal-Ligijiet ta’ Malta iżda dan il-Kap jagħmel referenza wkoll għall-Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta’ Malta li wkoll jitfa’ l-piż li juri l-origini leċita tal-flus, proprjeta jew rikavat fuq il-persuna akkużata.

Għalhekk, dan il-livell ta’ prova “prima facie” japplika kemm għall-persuna li tkun akkużata b’money laundering taht il-Kap 101 kif ukoll taht il-Kap 373.

Issa, peress illi l-Artiklu 2(2)(a) ta’ l-istess Att jeżimi mir-responsabilita’ l-prosekuzzjoni illi ttipprova xi htija preċedenti in konnessjoni ma xi attivita’

kriminali, kull ma ghandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li ma kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu illegali. Kull ma trid tipprova huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali. [emfazi tal-Qorti]

Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.

Ikkunsidrat :

Hu ben saput illi l-Qorti generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibbli, l-probabbli, minghar dubju dettat mir-raġuni u ċ-ċertezza.

Iżda l-prova "**prima facie**" hija wżata mill-Maġistrat Inkwirenti meta jirredici l-Process Verbal u l-Maġistrat Istruttur fl-għeluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibbli u l-probabbli.

L-awtur **Blackstone** (At D 6.21) jgħid fost affarijiet oħra,

"Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer."

Il-probabbli huwa l-livell użat fi proċeduri ċivili. Għalhekk skond dan l-awtur "prima facie" huwa anqas minn hekk u jista' jigi definit bħala "a case to answer", ħaġa li għandha tigi investigata aktar fil-fond.

Fil-kuntest tal-provi illi l-prosekuzzjoni gābet f'dan il-każ, intlaħaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer"?"

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

Illi fl-istess każ il-Qorti tal-Appell Kriminali kellha l-opportunita` tagħmel analiżi approfondita u dettaljata dwar l-oneru tal-prova li tinkombi lill- partijiet f'kazijiet ta' hasil ta' flus. Fil-fatt dik l-Qorti qalet hekk:

Ma hemmx dubju illi r-reat ta' money laundering huwa wiehed mir-reati l-aktar diffiċli u delikati biex jiġu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jiġu ġirati u jinħbew mill-provenjenza lleċita tagħhom jagħmluha kważi impossibli illi l-investigaturi jsibu traċċa tal-provenjeza tal-flus. Kien għalhekk illi f'dawn iċ-ċirkostanzi l-liġi tal-Money Laundering Kap 373 tpoġġi l-oneru fuq dak li jkun illi huwa jipprova għas-sodisfazzjon tal-Qorti l-provenjenza leċita tal-flus illi jkunu nstabu fuqu.

Dan il-bdil ta' l-oneru tal-provi m'hijiex wahda kapriċċuża u kif qalet il-Qorti fil-kawża **“Il-Pulizija vs John Vella”** “din hi liġi strordinarja li tintroduċi kunċetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tiġix reża xi sturment ta' ingustizzja, aktar reminixxenti taż-żminijiet ta' l-inkwizizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . .”.

Il-Qorti qiegħda tagħmel dan il-pronunċjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal- Kap 373 tal-Liġijiet ta' Malta illi għandhom jinqraw fid-dawl ta' l-Artiklu 21(1C)(b) tal-Kap 101 tal-Liġijiet ta' Malta li jistipulaw li l-Avukat Ġenerali jista' jakkuża persuna bir-reat ta' “money laundering” mingħajr ma jkollu xi sentenza b'referenza għal xi offiża preċedenti. Ma dan kollu jibqa' l-fatt illi l-Avukat Ġenerali għandu jipprova n-ness bejn il-flus jew il-proprjeta u l-attività kriminali li tkun generat dawk il- flus.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Ġenerali, l-Qorti tagħmel referenza għall-kawża **“Il-Pulizija vs Paul Borg”** **deċiża mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru tal-2003.**

F'din il-kawża l-Qorti kienet qalet illi meta l-Avukat Ġenerali jakkuża lil xi hadd bl-offiża ta' money laundering taħt il-Kap 101 tal-Liġijiet ta' Malta, l-Avukat Ġenerali għandu jipprova “prima facie” n-ness bejn il-flus jew il-proprjeta u l-attività kriminali li tkun generat dak il-flus jew proprjeta. Minn eżami u qari akkurat ta' din id-dispożizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeċiedi li tipproċedi skond l-Ordinanza Kap 101 u mhux taħt id-dispożizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra “Money Laundering”, fejn l-attività' kriminali sottostanti tista' tkun varja u tirreferi għall-ksur ta' diversi liġijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jiġi “prima facie” pruvat li l-akkużat ikun qed jaġixxi bi ħsieb li jaħbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bħala riżultat ta' ksur ta' xi dispożizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkużat.”

Illi kif kkonkludiet b'mod konċiż iżda preċiż għall-aħħar, il-Qorti tal-Maġistrati (Malta) fil-kawża **Il-Pulizija vs Alfred Delia et:**

Illi għalhekk il-mistoqsija li trid tiġi riżolta fil-każ in ezami hija dik interposta mill-Qorti ta' l-Appell Kriminali fil-kawża hawn fuq kwotata u cioe fil-kuntest tal-provi illi l-prosekuzzjoni gabet f'dan il-kaz, (provi biex jiġi pruvat in-ness

bejn il-flus utitlizzati biex jinxtraw il-vetturi imsemmija u xi attivita kriminali) intlaħaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer" biex mbagħad l-oneru tal-prova jdur fuq l-imputati biex jippruvaw l-orijini legittima tal-flus utitlizzati.²⁷

Il-Qorti tal-Appell Kriminali (Sede Superjuri) rritiniet kif geġ dwar ir-rekwiżit li għandu jkun hemm indikazzjoni ċara tar-reat sottostanti ossia l-attivita' kriminali li ssir riferenza għaliha fl-artikolu 2(2) tal-Kapitolu 373:

7. In its judgement regarding these pleas, the Criminal Court said:

"That as regards the first count, the accused is claiming that this is null and void because it does not in any way indicate the antecedent offence or source which could give rise to money laundering.

"The accused is arguing that the Attorney General must at least prove prima facie that the money is coming from an illicit activity. If there is a shifting of the burden of proof, this must be accompanied by an illicit activity which illicit activity should show in the bill of indictment. In this case no previous offence was established, therefore there is no antecedent criminal act. The situation is very similar to the crime of receiving stolen property where there must be proof that the goods have a criminal origin. Therefore, in matters of money laundering, the Prosecution must prove the illicit origin of the money. The suspicion of a crime is not enough. It has yet to be established what is the predicate offence.

.....

"This means, therefore, that if according to the accused, the bill of indictment does not in any way indicate the antecedent offence, or source, this does not mean that evidence of this offence can not be brought during the trial."⁽²⁸⁾

Illi dwar l-ispjegazzjoni inverosimili li jagħtu l-imputati, partikolarment Buttigieg li jipprova jattribwixxi n-numru konsiderevoli ta' drabi fejn ordnijiet gew kanċellati bħala żbalji li saru minn trainees li kienu sorveljati minnu, u għal dak li tiddikjara meta xehdet quddiem il-Qorti Cutajar li l-flus hasbet li kienu geġjin mill-bejgħ ta' mutur u mill-part-time li kien jagħmel Buttigieg, ser issir riferenza ukoll għal dak li gie dikjarat minn l-istess Qorti:

18. It is also true that article 22(1C)(b) of Chapter 101 of the Laws of Malta is applicable to proceedings under Chapter 373 (see article 3(3) of said Chapter 373) and that this article provides:

"In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused."

27 Qorti tal-Magistrati (Malta) Bħala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke. Deciza 23.05.2013, Kump. Nru 672/2010.

28 The Republic of Malta vs Morgan Ehi Egbomon, Appell fuq Decizjoni tal-Qorti Kriminali fuq Eccezzjonijiet Preliminari, Att t' Akkuza Nru. 16/2009. Dec 31.07.2014.

19. Nonetheless the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st April 2005 in the case *The Republic of Malta vs Gregory Robert Eyre and Susan Jayne Molyneaux*, must be applied:

“(i) it is for the prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

Fid-deċiżjoni tagħha fil-proċeduri fl-ismijiet **“Il-Pulizija vs Dayang Sakienah Binti Mat Lazin**, il-Qorti tal-Maġistrati (Malta) ikkunsidrat:

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case Republic of Malta vs John Vella when it said:⁽²⁹⁾

“...l-Avukat Ġenerali jista’ jakkuża persuna bir-reat ta’ money laundering mingħajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jiġi allegat li huwa l-attività kriminali sottostanti.... Ċertament pero ikun x’jkun il-każ, jekk l-Avukat Ġenerali jiddeċiedi li jakkuża lil xi hadd b’money laundering ... irid jindika n-ness bejn l-attività kriminali sottostanti partikolari li jkun qed jallega.”

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shifts on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.⁽³⁰⁾”

29 Deciza 29.11.1999 u citata f’ *Il-Pulizija vs Paul Borg* (Qorti tal-Appell Kriminali sede Inferjuri) Deciza 06.10.2003.

30 Case Number: 197/2008; 23.11.2009, per Onor. Magistrate Dr Doreen Clarke.

Fis-sentenza tal-**25 ta' Settembru 2023** deċiża mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fl-ismijiet **Republic of Malta vs Sunday Eboh**, insibu dawn il-punti pertinenti:

“Thus it results that (i) once monies were received and retained in his account without lawful excuse, knowing full well, their tainted origins, and multo magis (ii) when the said monies were in his possession, transacted and withdrawn or purchases made therefrom, thus disguising the origin of the funds, Eboh became guilty of money laundering”

Fid-dawl ta' dawn is-sentenzi tal-Qorti tagħna u l-prinċipji hemm stabbiliti, ir-rikorrent jemmen li huwa laħaq il-grad ta' *prima facie* biex juri li timmerita *in genere* dwar is-sugġett materjali tad-delitt ta' hasil ta' flus kommess minn **Robert Vella** sija bħala awtur u **sija bħala kompliċi fl-istess kif ukoll bħala parteċipi f'assoċjazzjoni kriminali (art. 48A tal-Kap.9) għall-istess skop.**

Ir-regolamenti 7(10) tal-S.L. 373.01:

“(10) A customer, or any person purporting to act on his behalf, who makes a false declaration or a false representation or who produces false documentation for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment”

Abbazi tad-dikjarazzjonijiet foloz li sehhu, u li gew rappurtati fl-ahbar tat-3 ta' Marzu 2024 (hawn fuq rappurtata minn TheShiftNews:- ***Lands Authority tender to legalise public land takeover after false declarations***), l-esponent jissottometti li fuq bazi *prima facie* hemm lok ta' in genere dwar Robert Vella u l-ksur da parti tieghu tas-S.L.373.01.

S.L.601.3 (Public Procurement Regulations)

“216. Any person who enters into a contract, whether in his own name or on behalf of others, in contravention of any of the provisions of this Part, and any person who induces any other person to enter into or appear on any such contract as aforesaid or the making thereof, or who aids or abets any of the aforesaid acts, shall be guilty of an offence and shall be liable on conviction to a fine (multa) not exceeding two thousand euro (€2,000).”

L-esponent jemmen li fuq bazi *prima facie*, u fuq l-iskorta tal-fatti elenkati hawn fuq fl-ewwel parti ta' dan ir-rikors mahluf, hemm bazi *prima facie* biex jigi argumentat u muri li Robert Vella, li bhala ufficjal pubbliku ghandu obbligi taht l-artiklu 141 tal-Kodici Kriminali, kiser l-artiklu 216 tal-Public Procurement Regulations.

Digrieti precedenti fuq talbiet taht l-artiklu 546(4A) tal-Kodici Kriminali

Ir-rikorrent issa ser jagħmel referenza għal xi digrieti ta' Maġistrati tal-Għassa li fihom ġew esposti l-prinċipji bażiċi dwar kif għandu jkun interpretat l-artiklu 546(4A) tal-Kodici Kriminali, u dan qed isir biss fit-tama umli li jkunu ta' għajjnuna għall-Maġistrat tal-Għassa li jrid jiddeċiedi fuq dan ir-rikors odjern.

1) Digriet Maġistrat Dr Doreen Clarke tad-29 t'April 2019 fuq talba ta' Marion Pace Axiaq et re 17 Black

“PRINCIPJI GENERALI

Illi ai termini tal-artikolu 346 tal-Kodicî Kriininali' inkjesta ghandha *tinzamm wara rapport*, denunzja jew kwerela ta' reat li jikkomporta piena ta' prigunerija ghal aktar minn tlett snin u jekk is-suggett materjali tar-reat jkun ghadu jezisti. Din id-dispozizzjoni, fl-ewwel subartiklu taghha tipprovdi hekk:

“Bla hsara tad-dispozizzjonijiet tar-subartikli li jigu minnufih wara dan, wnra r-rapport, id-denunzja jew il-kwerela to' reat li jista' jinghata l-piena ta' prigunerija ghal izjed minn tliet snin, u jekk is-suggett materjali tar-reat ikun ghadu jezisti, ghandu jigi deskritt l-istat tieghu, bid-dettalji kollha wiehed wiehed u ghandu jigi msemmi l-istrument u l-mod li bih dan l-istrument seta' jgiu l-effett.

Ghall-finijiet ta' kull investigazzjoni bhal din, ghandu jsir access fuq il-post.

Minn din id-dispozizzjoni jirrizulta li meta Magistrat:

1. jircievi rapport, denunzja jew kwerela;
1. dwar reat li ghalib tista' tinghata l-piena ta' aktar minn tlett snin prigunerja; u
1. is-suggett materjali tar-reat ikun ghadu jezisti

Ghandha ssir inkjesta bl-ghan li:

- A. jigi deskritt l-i stat tas-suggett materjali, bid-dettalji kollha wiehed wiehed;
- A. u jigi imsemmi l-istrument u l-mod li bih dan l-istrument seta' gab l-effett.

III is-subartikolu (1) hawn kwotat ma jsemmi xejn dwar minghand min il-Magistrat ghandu jircievi r-rapport, denunzja jew kwerela. Normalment pero huma l-pulizija li, wara li jkun sarilhom rapport, denunzja jew kwerela u fil-fehma taghhom ikun mehtieg li ssir inkjestn,

jinfurmaw lill-Magistrat u jitolbu li ssir l-inkjesta. Kien fis-sena 2006, permezz ta' l-emendi introdotti bl-Att XVI li gie stabbilit li kwalunkwe persuna, li mhux pulizija jew l-Avukat Generali, setgħet tagħmel denunzja jew kwerele direttament lil Magistrat.

Illi l-fatt b'dawn l-emendi fil-artikolu 546 imsemmija gew introdotti s-subartikoli (4A), (4B) u (4C)²; dawn jipprovdu hekk:

(4A) Mesa r-rapport, id-denunzja jew il-kwerales jsiru lil Magistrat toht dan l-artikolu minn xi persuna li ma tkunx l-Avukat Generali jew ufficjal tal-pulizija, ir-rapport, id-denunzja jew il-kwerales għaridhom isemmu car lill-persuna suspettata li għamlet ir-reat (hawn iżjed 'l quddiem f'dan l-artiklu msejha "il-persuna suspettata"). Il-Magistrat għandu jordna li r-rapport, id-denunzja jew il-kwerales, skond ma jkun il-kaz, jigi notifikat lill-persuna suspettata fil-woqt li jagħtihi zmien għal risposta u wara li jgħaddi dak iż-żmien il-Magistrat għandu jiddeciedi jekk jagħmilx l-access. Il-Magistrat għandu jiddeciedi li jogħmel l-access biss jekk ikun stabilixxa li l-prerekwiziti meħtieġa biex isir dak l-access ikunu jeżistu.

(4B) Id-decizjoni tal-Magistrat taht is-subartiklu (4A) għandha tigi notifikata lill-persuna li għomlet ir-rapport, denunzja jew il-kwerales u lill-persuna suspettata. Kull wieheď minnhom jista', fi zmien jumejn tax-xogħol mid-data tan-notifika tad-decizjoni jagħmel rikors lill-Qorti Kriminali biex tigi revokata d-decizjoni tal-Magistrat u l-Qorti Kriminali għandha tagħti d-decizjoni tagħha fuq ir-rikors bl-urġenza.

(4C) F'kull kaz fejn ikun .ser isir access taht id-dispożizzjonijiet tas-subartiklu (4A) u(4B) il-Magistrat li jmexxi l-access għandu jintgħazel bil-polza minn fost il-Magistrati kollha.

lili minn qari tagħhom huwa car li dawn id-dispożizzjonijiet jistipulaw x'procedura għandha tigi segwita meta Magistrat jircievi denunzja mingħand persuna li mhux pulizija jew l-Avukat Generali; u, meħuda d- d-ccixjoni li għandha tinzamm inkjesta, kif għnndu jintgħazel il-Magistrat li effettivament ser ikun qed imexxi l-inkjesta'. Dawn id-dispożizzjonijiet ma jbiddu xejn mir-rekwiziti predisposti fis-subartikolu (1) ta' l-artikolu 546 u li jridu jissussistu biex tkim tista' tinzamm inkjesta. Fil-fatt ir-rekwiziti imsemmi f'dan is-subartikolu japplikaw kollha u jridu jissussistu indipendentement minn min jitlob it-tneđja tal-inkjesta, u cioe hux il-pulizija, hux l-Avukat Generali, jew hux id-denunzjant jew il-kwerales.

Dawn l-emendi lanqas ma biddlu xejn f' dak li għandu jkun l-ghan ta' l-inkjesta.

.....

L-OGGEZZJONI SOSTANTIVA

Illi t-tieni kategorij ta' oppozizzjoni hija wahda "sostantiva" u tirreferi għall-kwalita ta' provi li gew prodotti in sostenn tal-talba odjerna u għall-fatt li ma gewx sodisfatti ir-rekwiziti elenkati fl-artikolu 546.

Illi jibda biex jinghad li fil-fehma tal-Magistrat sottofirmat hija zbaljata 1-premessa li minnha telqu tnejn mill-persuni suspettati fl-risposta tagħhom cioe li r-rekwiziti eleikati fl-artikolu 546 u li jridu jissussistu biex tinbeda inkjesta buma erbgh. Dawn jikkontendu li permezz tad-denunzja 1) jigi identifikat ir-reat; 2) tr-reat ikun wiehed li jikkomporta piena ta' aktar minri tlett swin prigionerija; 3) jigi dcskritt is-suggett materjali tar-reat bid-dettalyi kollha wiehed wlched; u 4) l-istrument jim imsemmi u jinghad ukoll il-mod li bih dan l-istrument setn' jgib l-effett, ossia kif gie attwat ir-reat denunzjat.

Illi kif diga ntqal aktar '1 fuq, qari ta' l-artikolu 546 għandu jwassal għall-konkluzjoni li r-rekwiziti huma *tlieta*: 1) r-rapport, deriunzja jcw kwerela li jircievi l-Magistrat; 2) ir-reat li għalih tista' tinghata l-piena ta' aktar minn tliet snin prigionerija; u 3) li s-suggett materjali tar-reat ikun għadu jezisti. Ta' l-istess opinjoni jidher li huma t-tlett persuni suspettati l- oħra għaliex fir-risposta tagħhom huma jelenkwa dawn l-istess tlett elementi bhala rekwiziti li jridu jigu sodisfatti biex tinbeda inkjesta. Huma jmorru pass oltre għaliex ighidu ukoll li li l-ewwwl zewg rekwiziti "*huama mera formalita u jirrikjedu biss daqqa ta' pinna*" mill-persuna li tkun qed tagħmel id-denunzja. Donnhom qed jimplikaw li kull ma jirrikjedu l-ewwel zewg rekwiziti huwa allegazzjoni kwalsiasi, dedotta bil-miktub, ta' reat li jikkomporta piena ta' prigionerija ta' aktar minn tliet snin.

Illi l-Magistrat sottofirmat sa certu punt tikkondividi dan il-hsieb għaliex fil-verita l-ewwel zewg rekwiziti jirreferu għan-*notitia criminis* u jirrikjedu l-allegazzjoni li gie kommess reat u li dan ir-reat jikkomporta piena ta' aktar minn tlett snin prigionerija. It-tielet rekwiziet kif gustament gie sottomess jirreferi qhas-suggett materjali tar-reat u cioe l-ezistenza ta' tracci materjali tar-reat li jiehtieg li jigu preservati u deskritti. Pero l-Magistrat sottofirmat ma tqies l-ewwel zewg rekwiziti bhala mera formalita jew *daqqa ta' pinna*.

Illi tajjeb jigi rilevat li fil-Kodici hemm dispozizzjonijiet oħra li jirregolaw d-dcnunzja bhala wahda mill-mezzi li biha tinghata n-*notitia criminis*. B'mod partikolari dwar x'forma għandha tiehu d-denunzja u x'informazzjoni għandha tikkontjeni jipprovdu l-artikoli 535 *et sequitur* tal-Kodici. Ai termini ta' l-artikolu 535 d-denunzja ta' reat tista' ssir minn kwalunkwe persuna li tkun saret taf b'dak ir-reat ***b'kull mod li jkun***, purché jkun reat prosegwibbli *ex officio*. Aktar minn hekk il-Kodici jipprovdi (artiklu 536) li d- *denunziant għandu jfisser car il-fatt bl-irqaqat kollha tieghu, u għandu jaghti, ***kemm jista' jkun***, daww il-partikularitajiet kollha mehtiega li jaccertaw ir-reat, li jistabilixxu x-xorta tieghu kif ukoll li juru min huma l-awturi u l-komplici*. Jipprovdi wkoll

(artiklu 537) li *d-denunzja tista' ssir bil-fomm jew bil-miktub, izda meta ssir bil-fomm hija ghandha, hlief fil-kazijiet li ma jkunux iridu dewmien, titnizzel bil-miktub minnufih u ghandha tigi iffirmata mid-denunzjant.*

Ill s-subartikolu (1) ta' l-artiklu 546 mbaghad jipprovdi li meta n-*notitia criminis* permezz tad-denunzja (jew rapport jew kwerela) tkun tirrigwarda reat li jikkoinporta piena ta' aktar minn tlett snin prigunerija u fic-cirkostanzi hemm imsemmija ghandha ssir l-inkjesta. Is-subartiklu (4A) ta' l-artikolu 546 imur oltre u jipprovdi li d-denunzja maghmula direttament til Magistrat ghandha ssemmi *rar lill-per.Tuna suspettaia li ghamlet ir-rest.*

Il li ghalhekk, u b'applikazzjoni ta' dawn id-disposizzjonijiet mehuda kollha flimkien, meta denunzja ssir mid-denunzjant direttament lil Magistrat ghandha ssir bil-miktub u d-denunzjat ghandu jfisser il-fatt denunzjat bl-irqaqat kollha tieghu; ***kemm jista' jkun*** (u ghalhekk mhux *sine qua non*) ghandu jaghti dawk il-partikolaritajiet kollha li jaccertaw ir-reat, u jistabilixxi x-xorta tieghu u ghandu jssemi car lill-persuna suspettata li ghamlet ir-reat.

Illi maghmula denunzja li tissodisfa dawn ir-rekwiziti ghandha tigi ordnata inkjesta jekk: 1) ir-reat denunzjat ikun wiehed prosegwibbli *ex officio* u li jikkumporta piena ta' aktar minn tlett snin prigunerija; u 2) jekk is-soggett materjali tar-reat ikun ghadu jezisti u cioe jekk ikunu jezistu tracci materjali tar-reat. Id-denunzjat mhux obligat jiddeskrivi l-istat tas-suggett materjali bid-dettalji kollha tieghu, jew li jsemmi l-istrument u l-mod li bih dan l-istrument seta' gab l-effett. Dak ghandu jinizulta mill-inkjesta u huwa propju l-iskop li ghalih issir l-inkjesta.

Illi dwar l-iskop ta' l-Inkjesta dwar l-*in genere* u r-rwol tal-Magistrat Inkwirenti kellha opportunita tippronunzja ruhha l-Qorti ta' l-Appell Kriminali fil-kawza **Repubblika ta' Malta vs Jason Calleja** ^(3.7.1997) :

“Il-Magistrat Inkwirenti fikors tal-Inkjesta...ma jagixxiex

Qorti Istruttoria, izda bhala Mngistrat ut sic.....

Stabbilit li l-Magistrat Inkwirenti f'Inkjesta ma jagixxiex bhala Qorti Istruttoria, x'inhija allura l-funzjoni tieghu? M'hemmx dubbju li l-ewwel konkluzjoni hija fl-Inkjesta huwaanqas m'ghandu l-funzjoni ta' Qorti ta' Gudikatura Kriminali. Certament huwa persuna intiga mill-Ligi stess bhala ta' importanza fundamentali fil-process tar-ricerka ghall-verita izda l-Magistrat Inkwirenti m'ghandux il-funzjoni li jistabilixxi l-htija jew l-innocenza ta' xi persuna, indiziata jew mhijiex...

In linea general, il-Magistrat Inkwirenti hu fdat lilu l-inkarigu li fil-kazijiet previsti mill-istess titolu jinvestiga ir-reat jew il-fatt rapport lilu u/jew izomm access li l-Ligi tipprevedi u fl-ahharnett jirredigi l-proces verbal li l-Ligi stess tirregola u tattribwilx valur probatorju. Dan kollu jifforma parti integrali mill-process geerali tar-ricerka tal-verita u jikkonsisti principalment fil-gbir u l-preservazzjoni ta' dawk il-provi kollha diretti u indiretti li l-Magistrat Inkwirenti jirnexxielu jiddentifika bhala pertinenti ghall-grajja jew reat li jkun

qed jinvestiga. Bhala tali, u kuntrarjament ghal dak li jigri f'certi sistemi kontinentali, il-Magistrat Inkwirenti mhux parti mill-Pulizija u wisqanqas mill-Prosekuzzjoni; anzi jidher car li fis-sistema taghna huwa arevist biex f'numru ta' kazijiet serji li l-ligi stess tispecifika, l-investigazzjoni ma ssirx biss, u l-provi ma jingabrux u ma jigux preservati biss mill-Pulizija, izda ukoll anzi essenzialmente minn persuni indiepenti mill-poter eżekuttiv tal-Istat u li jiggarrantixxi li r-ricerka tal-verità ma tkunx inkwinata minn xi interess hlief dak suprem li kollot isir skond il-haqq u l-gustizzja. Rwol dan li Lord Tucker, fl-appell quddiem il-Privy Council in re Regina vs George Terreni, obiter iddeskriva bhala a good way of preserving evidence.

*S'intendi certi decizjonijiet il-Magistrat Inkwirenti irid bil-fors johodhom, anzi jista' jigi affermat li minghajr l-eżercizzju ta' din il-funzjoni, l-ufficju tieghu, f'diversi kazijiet jisfa bla sens.....**Hi certament il-funzjoni tal-Magistrat Inkwirenti li jinvestiga, okkorrendo permzz ta' esperti, ic-cirkostanzi kollha tal-kaz u jipprova jasal ghal konkluzjoni dwar jekk verament sarx ir-reat u jekk hemmx provi tali li jippuntaw lejn xi hadd partikolari li jista' jigi investigat ulterjorment jew addirittura akkuzat.***

*Certament mhijiex il-funzjoni tal-Magistrat Inkwirenti li jiddeciedi li ghar-reat investigat minnu huwa certament jew probabilment responsabbli xi hadd partikolari, ghax kif inghad huwa ma jagixxix qua Qorti, la ta' Istruttoria u annas ta' Gudikatura. **Izda certament hija certament il-funzjoni tieghu li jiddeciedi l-ewwel hemmx provi sufficjenti li verament sar reat u t-tieni jekk a bazi tal-provi —indipendentement mill-apprezzamento taghhom— hemmx provi bizzzejjed biex jinghad li xi hadd partikolari jista' possibilment ikun passibbli ghal proceduri kriminali.** Dan mhux biss jikkostitwixxi funzjoni tal-Magistrat Inkwirenti, izda fil-fehma ta' din il-Qorti huwa addirittura id-dover tieghu. Jigi ripetut li l-istitut tal-Magistrat Inkwirenti evidentement inholoq biex kemm hu passibbli certi indagnijiet li jistghu iwasslu ghall-kxif ta' reati u/jew ta' persuni responsabbli ghalihom jew li jistghu ikunu necessarji f'certi eventi serji, dawn isiru bl-ikbar serjeta u 'l fuq mis-suspett jew l-influwenza diretta jew indiretta tal-poter eżekuttiv tal-Istat.”*

Illi fis-sentenza moghtija mill-Prim Awla tal-Qorti Civili (Sede Kostituzzjonali) fil-kawza fl-ismijiet Il-Kummissarju tal-Pulizija George Grech vs Id-Direttur Generali u Registratur tal-Qrati u l-Avukat Generali (17.1.2022), din il-Qorti irribadiet il-principju li inkjesta tinzamm biex jigi determinat jekk hemmx tracci jew elementi ta' xi reat li ghalih xi persuna tista' tkun passibbli kriminalment; dik il-Qorti qalet hekk:

“Fuq rapport, denunzja jew kwerela, li fuqhom ghandhom isiru proceduri, maghmula mill-PuLizija Ezekuttiva jew lil Magistrat, ghandhom jibed procedure. Jistghu isiru accessi, jinstemghu xhieda, jigu elevati oggetti, nominati esperti biex jaghmlu ezamijiet tal-istess oggetti u jigu preparati rapporti. Il-Magistrat jista’ jordna l-arrest ta’ kull persuna li waqt l-access jikxef li hija hatja, jew li kontra taghha jkun ingabru indizji bizzejjed. Jista’ jordna l-qbid ta’ oggetti u tfittxija f’postijiet—554. **Bazikament l-Inkjesti tal-Magistrat hi Intima għall-preservazzjoni tal-provi** u hu b’mod eccezzjonali illi l-Magistrat jeżercita l-poter tiegħu taht l-artiklu 554(1) tal-Kodici u jordna l-arrest. **Suggett materjali tar-real għandu jigi deskritt bid-dettalji kollha wiehed wiehed u għandu jigi msemmi l-istrument u l-mod li bih dan l-istrument seta’ jgħib l-effett.** Waqt l-access jistghu jittiehu ritratti. Jistghu jinstemghu diversi xhieda u Din għandhom jigu mdahhla fil-process verbal.....L-Inkjesti Magisterjali b’ebda mod ma tista’ tkun kunsidrata bħala “a trial” izda kostatazzjoni ta’ fatti, għalkemm il-Magistrat spiss jesprimi opinjoni prima facie dwar jekk għandhomx jittiehu proceduri fil-konfront ta’ persuna jew persuni in konnessjoni ma’ xi reat....

F’kaz ta’ guri, jew Kumpilazzjoni jingħad li bniedem għadda guri jew Kumpilazzjoni. Izda f’kaz ta’ Inkjesta mhux legalment ezatt u korrett dak li jgħid ir-rikorrent fl-ewwel paragrafu tar-rikors tiegħu u cjoe illi hu kien għaddej inkjesta; **fil-verita tkun qed issir Inkjesta dwar allegazzjonijiet illi jinvolvu lir-rikorrent. Dak li qed jigi ind agat u investigat fl-Inkjesta hu l-veracita tal-allegazzjonijiet li setghu saru fil-konfront tar-rikorrent u biex jigi determinat jekk hemmx tracci jew elementi ta’ xi reat li għalih xi persuna (jista’ jkun kemm ir-rikorrent kif ukoll xi persuna ohra inkluz min għamel l-allegazzjonijiet tista’ tkun mitliuba tirrispondi għalihom**³¹. ”³²

Illu minn qari tas-subartikolu (1) tal-artikolu 546 u tenut kont ta’ dak li tipprovdi l-gurisprudenza hawn kwotata għandha tkun cara id-distinzjoni fl-imsemmija dispozizzjoni bejn dawk li huma r-rckwiziti rikjesti biex issir inkjesta u dak li huwa l-iskop ta’ l-inkjesta. Id-denunzjant għandu jfisser il-fatti b’l-irqaqat kollha tagħhom u li wassluh biex jissuspetta li sar reat, għandu, kemm jista’ jkun jagħti dawk il-partikolaritajiet mehtiega biex jaccertaw ir-reat u li jistabilixxu n-natura tiegħu u għandu jindika min huma l-persuna susspettati. Jekk ir-reat huwa wiehed li jikkomporta piena ta’ aktar minn tlett snin prigunerija u s-soggett materjali tar-reati għadu jeżisti allura ssir inkjesta b’cix jigi preservati u deskritti dawk il-provi u biex jigi aaccertat jekk verament sarx ir-real (l-istrumenti u kif setghu gabu dak l-effett) u jekk hemmx provi tali li jippuntaw lejn xi hadd partikolari li jista’ jigi investigat ulterjorment jew addirittura akkuzat.

31 dawn l-istess principji gew ripetuti verbatim f’sentenza ohra ta’ dik il-Qorti deciza fis-17.01.2022 ukoll: Karl Heinrich Muscat vs Avukat Generali et.

32 is-sottolinear huwa KOLLU tal-Magistrat Dr Doreen Clarke.

Il lii ghalhekk d-denunzjant mhux tenut ifforni hu, lill-Magistrat li ntalab jordna li ssir inkjesta, it-tracci materjali tar-reat, ossia il-provi li permezz taghhom jista' jigi accertat jekk verament sehhx reat jew le. Dawk it-tracci jew provi jridu jigu migbura, preservati u deskritti fil-kors ta' l-inkjesta; dak li obbligat jaghmel id-denunzjant huwa li jforni l-informazzjoni kollha dwar il-fatti rilevanti u dwar il-prov i li ghandhom jigu preservati.

lkkunsidrat

Ill i din l-ahhar kunsiderzzjoni twassal ghal ilment iehor tal-persuni indikati bhala suspettati mir-rikorrenti, cioe in-nuqqas ta' provi li jsostnu dak li qed jallega r-rikorrent, u l-inammissibilita ta' daw k il-provi li huwa fil-fatt produca mhux biss f'dan l-istadju imma ankc f' kwalunkwe proceduri penali li jistghu jkunu indikati.

Ill i l-Magistrat sottofirmat ma tikkondividiex dan il-hsieb propju ghaliex kif intqal aktar 'l fuq issir inkjesta propju biex jigu preservati t-tracci materjali (il-provi) tar-reat li huwa allegat li gie kommess u biex dan isir bil-kawteli kollha li trid il-Ligi u b'mod li l-prova tkun ammissibbli f'eventwali proceduri penali jekk dawn javveraw ruhhom. Biex jinghata eżempju wiehed jista' jirreferi ghal recordings mehuda minn CCTV meta il-kommissjoni ta' delitt jew xi parti minnu tinqabad f'filmat. Jekk denunzjant ikun jaf b'l-ezistenze ta' dan il-filmat fid-denunzja ghandu jghid li jezisti dan il-filmat pero mhux obbligat jipprezenta kopja tieghu mad-denunzja. Anke jekk jipprezenta xi kopja li jirnexxielu jottjena, jibqa' l-obbligu tal-Magistrat Inkwirenti, permezz ta' l-esperti relattivi, li jaccerta li dak il-filmat jigi deskritt u preservat bil-kawteli kollha li trid il-Ligi b'mod li tigi salvagwardjata ic-chain of custody u tigi zgurata l-awtenticita u l-ammissibilita tal-filmat bhala prova f'proceduri penali. Il-kopja tal-filmat li jkun ottjena d-dcnunzjant (li ma tistax titqiex prova ammissibili minhabba l-mod kif ottjenuta) tista' taghti aktar sahha lill-allegazzjoni tieghu li sar reat u li hemm provi x'jigu preservati; il-preservazzjoni u d-deskrizzjoni pero tibqa fil-mansjoni tal-Magistrat Inkwirenti.

.....

Ill i tenut kont tas-suespost, tenut kont li r-rikorrenti jelenkaw sensiela ta' fatti li jindikaw li seta' gie kommes reat, tenut kont li huma jindikaw bi precizjoni a bazi ta' dawn il-fatti liema reati setghu gew kommessi; u peress li s-suggett materjali ta' dawn ir-reati ghadu jezisti hija l-fehma tal-Magistrat sottofirmat li r-rekwiziti kollha rikjesti ai termini tal-artiklu 546 gew sodisfatti u t-talba tar-rikorrenti ghat-tnedhija tal-Inkjesta hija gustifikata.” ”

2. Mid-digriet tal-Qorti Kriminali per Sinjura Imhallef Edwina Grima fid-29.11.2019 ghat-talba tal-in genere li kienet saret dwar il-VGH minn Repubblica:

“Illi dwar l-ilment ventilat mill-appellanti fir-rigward tal-interpretazzjoni li ghandha tigi moghtija lill-artikolu 546(4A) meta abbinat mal-artikolu 546(1) tal-Kodici Kriminali, din il-Qorti, kif ippresjeduta, kellha diga okkazjoni tesprimi ruhha u tistqarr minnufih illi ma tistax taqbel ma’ dak mistqarr mid-denunzjati/appellanti fl-aggravju minnhom intentat.

Illi jibda biex jinghad illi l-ligi, kemm fl-artikolu 537 tal-Kodici Kriminali u cioe’ meta d- denunzja issir lill-Pulizija Ezekuttiva, kif ukoll meta din issir lill-awtorita gudizzjarja u cioe’ lil Magistrat permezz tal-procedura odjerna, tohloq il-formalita tal-kitba ghad- denunzja jew rapport u dan sabiex id-denunzjant jesponi b’mod car il-fatti illi fuqhom huwa qieghed isejjes ir-rapport tieghu. Dan ghaliex:

“Il-formalita’ tal-kitba dwar il-fatti ddenunzjati (artikolu 537) hija ovvjament diretta biex jigi evitat kull ekwivoku dwar il-fatti ddenunzjati, u biex tigi assicurata l-fidatezza u l-attendibilita’ tad-denunzja.³³”

Illi bl-istess kejl allura l-legislatur ried illi meta din meta din issir quddiem il-Magistrat, dawn il-fatti ukoll jigu indikati kif ukoll tigi indikata l-persuna suspettata u dan sabiex l-istess ikollha jedd twiegeb ghal dan ir-rapport maghmul fil-konfront taghha. Dan kollu sabiex jigi assigurat, kif inghad fis-sentenza hawn fuq iccitata “il-fidatezza u l-attendibilita’” tad-denunzja meta dan issir mic-cittadin. Il-Qorti tista’ tifhem madankollu illi c-cittadin privat li jaghmel uzu mill-procedura unika imfassla fl-artikolu 546(4A) tal-Kodici Kriminali ma jistax ikollu l-ghoddu kollha ghad-disposizzjoni tieghu sabiex ikun jista’ jressaq ‘l quddiem il-provi in sostena tal-investigazzjoni minnu mitluba. Dan huwa fil-fatt l-ghan tal-in genere u cjoe sabiex jigu migbura u ippreservati l-provi kollha li jistghu jkun pertinenti ghalbiex jigi stabbilit jekk twettaqx xi reat u jekk jistax ikun hemm persuna jew persuni passibbli ghal proceduri penali meta ghandu jigi deskritt “is-suggett materjali tar-reat bid-dettalji kollha wiehed wiehed u ghandu jigi msemmi l-istrument u l-mod li bih dan l-istrument seta’ jgib l-effett³⁴.”

Jidher illi dawn il-provi ghadhom jezistu biex b’hekk l-istrument li bih seta’ gie kommess ir-reat jista’ jigi ippreservat, tant illi kif inghad diga’ hemm inkjesta dwar l-in genere fuq saqajha marbuta mal-istess fatti rappurtati mid-denunzjanti fid-denunzja odjerna. Id- denunzjanti fil-fatt sahanitra jezebixxu kopji ta’

33 Il-Pulizija vs George Grech 22/07/1996

34 Artiklu 546(1) tal-Kodici Kriminali

kuntratti u dokumenti u jindikaw ukoll diversi socjetajiet kummercjali u persuni ohra li jistghu jitressqu biex jaghtu x-xieghda taghhom waqt l-in genere.

Issa id-denunzjati/appellati jishqu illi dawn il-fatti kif rappurtati mid-denunzjanti huma biss serje ta' kummenti u kongetturi li lanqas jindikaw il-mod kif huma bhala persuni suspettati setghu kkomettew dawn ir-reati. Kwindi din fil-fehma taghhom tista' tammonta biss ghal kritika politika u mhux ghal kummissjoni ta' xi reat. Fir-risposta taghhom jidhlu fil-mertu tal-fatti u r-reati abbinati mal-istess, ezercizzju li madanakollu ma jistax isir minn din il-Qorti, f'dan l-istadju, ghaliex kif diga' sottolinjat, dan huwa biss ix-xoghol tal-Inkwirenti. Per eżempju meta l-appellanti isemmu r-reat tal-hasil tal-flus u r-rekwiziti marbuta mal-istess, indikati komunement bhala dawk ta' placement, layering u integration b'referenza ghall-allegat flus riciklat, dawn il-fatti jistghu jemergu biss mill-istharrig li isir fl-in genere u certament mhux il-kompitu ta' din il-Qorti li tinvestiga u tara x'sar per eżempju mill-flejjes mghoddija lil grupp VGH minn fondi pubblici. L-istess fir-rigward tar-reati l-ohra indikati mid-denunzjanti.

Illi l-Qorti ma tistax taqbel mad-denunzjati/appellati illi l-fatti esposti huma kongetturi billi dawn il-fatti huma fid-dominju pubbliku, fatti li fil-fehma tad-denunzjanti ghandhom jigu mistharrga sabiex jigi stabbilit jekk kienx hemm il-kummissjoni tar-reati kollha jew uhud minnhom li huma jiddeskrivu fid-dettall.

Illi kif abbilment espost fid-decizjoni impunjata, l-inkjesta fit-termini tal-artikolu 546 tal-Kodici Kriminali ghandha issir jekk ir-reat li dwaru tkun saret dik id-denunzja jkun reat li igorr mieghu iktar minn tlett snin prigunerija, is-suggett materjali tar-reat ghadu jezisti tant illi ghandu jigi deskritt l-istat tieghu bid-dettalji kollha u l-istrument adoperat sabiex igib l-effett allegatament inkriminatorju. Illi l-manzjoni risposta f'idejn il-Magistrat fit-termini tal-artikolu 546(4A) tal-Kodici Kriminali u f'idejn din il-Qorti, meta jkun hemm talba ghar-revizjoni ta' dik id-decizjoni, mhijiex sabiex tqies jekk prima facie giex kommess xi reat, izda biss sabiex tara li jezistu r-rekwiziti mehtiega fil-ligi sabiex tigi varata inkjesta dwar l-in genere.

Issa f'dan il-kaz gie indikat ir-reat jew reati li jista'/setghu gie/gew kommess/i, liema reati igorru piena ta' aktar minn tlett snin prigunerija. Il-persuni suspettati huma indikati mid-denunzjanti tant illi anke jigi minnhom indikat ghal liema reati huma jistghu jkunu passible, u s-suggett materjali tar-reat ghadu jezisti tant illi jigu esposti serie ta' fatti u esibire diversi dokumenti flimkien mad-denunzia, oltre ghal fatt illi uhud mill-provi jistghu jitqieghdu ghad-disposizzjoni tal-Magistrat Inkwirenti mill-entitajiet pubblici u governativi. Dan ma jfissirx b'daqshekk illi l-persuni suspettati ghandhom ikunu soggetti ghal xi proceduri kriminali f'dan l-istadju, izda biss li ghandha ssir inkjesta sabiex jigi stabbilit jekk il-fatti rapportati jammontawx prima facie ghar-reati infraskritti, decizjoni imbaghad li rispetta lil Magistrat Inkwirenti u mhux lil din il-Qorti u lil Magistrat qabilha.

Jerga' jigi ribadit illi l-mansjoni tal-Magistrat fit-termini tal-artikolu 546(4A) tal-Kodici Kriminali huwa sabiex jigi stabbilit jekk war li ssir id-denunzja jezistux ir-rekwiziti biex issir l-Inkjesta dwar l-in genere u mhux biex jigi stabbilit il-fondatezza o meno tar-rapport maghmul u dan ghaliex b'daqshekk dan ma ifissirx

illi l-fatti kif rapportait necessarjament ser iwasslu ghal xi proceduri kriminali kontra s-suspettati jew kontra xi persuni ohra, izda biss illi ghandha issir l-investigazzjoni sabiex jigi stabbilit dan il-fatt.

Illi finalment ghalkemm il-Qorti tqies illi l-Avukat Generali ma ghandux locus standi f'dawn il-proceduri, u dan sabiex ma ikunx hemm pregudizzju ghar-rwol tieghu kif imhaddan fl-artikoli 550A u 569(6) tal-Kodici Kriminali, madanakollu huwa gie notifikat bl-atti ghal fini ta' kompletezza fil-proceduri fejn fir-risposta tieghu rrimetta ruhu ghad- decizjoni tal-Qorti.

.....

Ghal dawn il-motivi il-Qorti taqta 'u tiddeciedi billi tichad l-appell maghmul mid-denunzjati u tikkonferma d-decizjoni appellata fl-intier taghha."

3. Mid-Digriet tal-Magistrat tal-Ghassa Dr C Farrugia Frendo tas-7 ta' Novembru 2019 fuq talba ghal *in genere* maghmula minn Emanuel Delia dwar bejgh ta' passaporti.

"Hekk kif issir id-denunzja u r-reat rappurtat ikun igår piena ta' aktar minn tlett snin prigunerija, u ukoll meta s-suggett materjali tar-reat ikun ghadu jezisti, l-Magistrat jipprocedi ghall-0investigazzjoni hekk imsejha in genere.

Ghalhekk meta denunzja ssir ai termini tal-Artikolu 546(4A) tal-Kapitolu 9 tal-Ligijiet ta' Malta, lill-Magistrat minflok lill-Pulizija, bil-Magistrat allura irid jiehu decizjoni jekk ghandhiex issir inkjesta dwar id-denunzja maghmula o meno u cjoe jekk jezistux dawk il-prerekwiziti fil-ligi mehtiega biex issir dik l-inkjesta u mhux li jigi investigat prima facie jekk sehxx xi delitt mid-denunzjati. L-artiklu 546 ighid hekk:

"Bla hsara tad-dispożizzjonijiet tas-subartikoli li jigu minnufih wara dan, wara r-rapport, id-denunzja jew il-kwerela ta' reat li jista' jinghata l-piena ta' prigunerija ghal iżjed minn tliet snin, u jekk is-suggett materjali tar-reat ikun ghadu jezisti, ghandu jigi deskritt l-istat tieghu, bid-dettalji kollha wiehed wiehed, u ghandu jigi msemmi l-istrument u l-mod li bih dan l-istrument seta' jgib l-effett. Ghall-finijiet ta' kull investigazzjoni bhal din, ghandu jsir access fuq il-post."

Dan ifisser illi l-Inkjesta ghandha issir jekk ir-reat li dwaru tkun saret dik id-denunzja jkun reat li jgorr mieghu piena iktar minn slett snin prigunerija, s-suggett materjali tar-reat ghadu jezisti tant illi ghandu jigi deskritt l-istat tieghu bid-dettalji kollha u l-istrument adoperat sabiex igib l-effett allegatament inkriminatorju.

L-artikolu 546(4A) ighid hekk:

"Meta r-rapport, id-denunzja jew il-kwerela jsiru lil Magistrat taht dan l-artiklu minn xi persuna li ma tkunx l-Avukat Generali jew ufficjal tal-Pulizija.....li l-prerekwiziti mehtiega biex isir dak l-access ikunu jezistu."

Ghalhekk ir-rekwiziti sabiex il-magistrat tordna ftuh ta' Inkjesta ta' dan it-tip huma tlieta:

1. *Id-denunzja;*
2. *Reat li ghalih tista' tinghata l-piena ta' aktar minn tlett snin prigunerija;*
3. *Li s-suggett materiali tar-reat ikun ghadu jezisti.*

.....

Illi ladarba l-Magistrat jara li dawn il-prerekwiziti gew sodisfatti u li s-suggett materjali tar-reat ikun ghadu jezisiti, allura l-Magistrat trid tiftah Inkjesta.

Illi certament il-Magistrat li jkun qed ritratta rikors bhal dan ma jistax joqghod jidhol u jara jekk jezistux provi sal-grad tal-prima facie jekk ghandhiex tinfetah inkjesta jew le, ghaliex inkella l-Magistrat jkun qed juzurpa x-xoghol tal-Magistrat Inkwirenti u sussegwentement tal-Qorti tal-magistrati waqt il-kumpilazzjoni. Lanqas ma jfisser li jekk jigi ordnat li tinfetah Inkjesta allura jirrizulta fiz-zgur li r-reat li qed jigi allegat huwa prosegwibbli.

Id-denunzjant mhux tentu kont li jfoprsi provi f'dan l-sitadju izda ghalkemm il-Magistrat f'dan l-istadju mhux tenut jevalwa l-provi sal-grad tal-prima facie, tal-andas id-denunzjant irid jaghti hjiel fir-rikors tieghu jew permezz tax-xhieda tieghu f'tit ifnormazzjoni dwar xi provi il-Magistrat ghandu jippreserva fl-sitadju ta' l-Inkjesta. Xi forma ta' direzioni jew hjiel ghandu jinghata ghaliex jekk ma jkunx hekk allura jkun hemm riskju li tinfetah inkjesta fuq suppozizzjonijiet u semplici allegazzjonijiet b'dan li l-Magistrat Inkwirenti jintbaghat fuq fishing expedition.....Qed jinghad hekk ghaliex jekk ma jkunx hemm provi x'jigu preservati allura inutili tinfetah Inkjesta u jsiru spejjez ghalxejn.

Fil-fatt din il-Magistrat ser tikkwota estensivament id-digriet tal-Magistrat Doreen Clarke datat 29.4.2019, u dan peress li gie prezentant bhala parti mill-Korp ta' dokumenti esebiti mar-rikors promotur ta' manwel Delia f'dawn il-proceduri:

"Illi ghalhekk id-denunzjant mhux tenut ifforni hu, lill-Magistrat li intalab jordna li ssir Inkjesta, it-tracci materjali tar-reat, ossia il-provi li permezz taghhom jista' jigi accertat jekk verament....."

.....u d-decizjoni pero tibqa' fil-mansjoni tal-Magistrat Inkwirenti."

4) Digriet moghti mis-Sur Magistrat Dr Philip Galea Farrugia fit-12.08.2024 fejn laqa' t-talba ta' Dr Jason Azzopardi ghall-ftuh ta' Inkjesta Magisterjali fuq korruzzjoni f'Identity Malta.

“..l-artiklu 546(4A) tal-Kodici Kriminali jistila b’mod car u inekwivoku illi l-access ghandu jsir **biss**³⁵ kemm-il darba jkunu jezistu l-prerekwiziti mehtiga”;

.... “illi l-prerekwiziti mehtiega li jirreferi ghalihom is-subartikolu (4A) tal-artiklu 546 tal-Kodici Kriminali huma li:

1. Ir-reat denunzjat ikun suggett ghal piena ta’ iktar minn 3 snin prigunerija....u li
2. Is-suggett materjali tar-reat denunzjat jkun ghadu jezisti.

Una volta jkunu jissusistu dawn iz-zewg (2) prerekwiziti, il-Magistrat **ghandu**³⁶ jaghmel access, ossia jiftah Inkjesta....”

Applikati dawn il-principji ghal dan ir-rikors odjern, l-esponent umilment jemmen li wera li l-prerekwiziti mitluba mill-artiklu 546(4A) gew soddisfatti minnu.

KONKLUZJONI

Ghaldaqstant u in vista tas-suespost, u filwaqt li minn issa r-rikorrent qed ipoggi lilu nnifsu ghad-disposizzjoni totali tal-Magistrat Inkwirenti jekk ihoss/thoss mehtieg minnu, jitlob bil-qima li l-Magistrat jiftah **B’MOD URGENTI** access u jibda “*in genere*” in konnessjoni mal-artikli tal-Ligi li r-rikorrent qed jindika li fuq bazi *prima facie* gew miksura

l-Art. 18, 42, 48A, 115, 121A, 121B, 121D, 124, 125, 126, 127, 135, 180, 188, 293 (aggravat bl-art.141), 294, 308, 309, 310 (aggravat bl-art.141) tal-Kodici Kriminali,

art. 2 u 3 tal-Kap.373, art. 7(10) tal-Avviz legali 373.01,

art. 216 tal-Avviz Legali 601.3,

u l-Kap.601 tal-Ligijiet ta’ Malta;

(ghall-kompletezza ghandha ssir referenza ghall-art.13 tal-Att dwar l-Interpretazzjoni meta qed jigi interpretat l-art.121D tal-Kap.9)

35 Enfazi tal-Magistrat Dr Galea Farrugia

36 Enfazi tal-istess Magistrat Dr P Galea Farrugia

mill-persuna suspettata Robert Vella

u dan stante li s-suggett materjali tad-delitt ghadu jezisti u huwa impellenti li jkun ippreservat mill-iktar fis.

Hija Inkjesta Magisterjali BISS li tista' u ghandha l-mezzi u l-awtorita tordna l-preservazzjoni tas-suggett materjali tad-delitti, inkluz billi jkunu issekwestrati s-servers u mobile phones u devices elettronici tal-ufficjal pubbliku indikat hawn fuq.

Dan dejjem taht kull ordni, direttiva u provvedimenti li l-Magistrat ihoss mehtieg.

Avv. Jason Azzopardi

jason@azzopardibusettaadvocates.com

Indirizzi tal-ufficju tal-persuna suspettata: Auberge de Baviere, Il-Belt Valletta.